

# **Freedom of expression on the web**

Examining the restrictions to publishing by news websites in Uganda



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## **ABSTRACT**

The media are vital institutions charged with providing information to the public and a platform for the debate and exchange of ideas and information. The media also perform the watchdog role that entails conducting investigations and holding those in positions of authority to account. It is on the basis of this crucial role that the media merit protection from interference. However, media freedom, like any other political freedom is not absolute but is subject to restrictions. These are aimed at safeguarding other rights and freedoms. The restrictions on media freedom should not result because a publication is offensive but must serve a legitimate purpose.

It is against this background that the study of freedom of expression on the web is conducted. The study examines the legal, non-legal, social-cultural, editorial and technical restrictions imposed on news websites in Uganda. It assesses the justifications for the restrictions and how they impact on media output.

A qualitative research approach was employed in collecting and interpreting data. Information was gathered by way of interviews, document analysis and an analysis of five news websites. The findings revealed that there was no specific law to regulate publication on news websites, which has led to speculation about the boundaries of expression on the web. Nevertheless, the Internet is restricted by media legislation on issues including terrorism, defamation and criminal libel. Other communication-related laws like the Regulation of Interception of Communications Act, the law on copyright and the Computer Misuse Bill may restrict publication on news websites.

It was also illustrated that societal values on moral issues have influenced media house to censor the publication of articles on homosexuality, pornography and nudity and bestiality.

Furthermore, technological glitches such as Internet hacks restricted access to news websites, thereby affecting media output.

I noted that the restrictions may have had a hand in putting some independent news websites out of business. Nevertheless, the major news websites have continued to publish regularly, which attests to relative media freedom on the web in Uganda.



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## **LIST OF ABBREVIATIONS**

ADF- Allied Democratic Forces

ACME- African Centre for Media Excellence

AMISOM- African Union Mission in Somalia

CBS- Central Broadcasting Services

DP- Democratic Party

EC- Electoral Commission

EU- European Union

ECHR- European Convention of Human Rights

FDC- Forum for Democratic Change

HRNJ-Uganda - Human Rights Network for Journalists in Uganda

IGG- Inspector General of Government

IGP- Inspector General of Police

LRA- Lord's Resistance Army

NRA- National Resistance Army

NRM- National Resistance Movement

RRU- Rapid Response Unit

UNDP- United Nations Development Programme

UNESCO- United Nations Educational, Scientific and Cultural Organization

UBOS- Uganda Bureau of Statistics

UCC- Uganda Communications Commission

UDDF- Uganda People's Defence Forces

UNLA- Uganda National Liberation Army

UPC- Uganda's People's Congress

ISPs- Internet Service Providers

WIPO- World Intellectual Property Organisation

ICTs- Information and Communication Technologies

## CHAPTER ONE

### INTRODUCTION

*“...the Internet has its own logic and semantics distinct from the press, TV and radio, and this creates a new idiom or modifies existing ones. Expression of ideas is since the Internet is no longer the same thing, not only in itself, but also by reason of its implications for the legal order” (Vincenzo Zeno-Zencovich, 2008: 107).*

This quote from Zeno-Zencovich provides the basis for this study which explores freedom of expression on the web. While the boundaries for the traditional media have been examined, those for the Internet are cause for exploration given its unique character. The study was triggered off by the need to explore the boundaries to publication of news on the Internet in light of its distinct “logic and semantics”.

This chapter starts the research process by providing a discussion on the development of the media industry in Uganda. It presents arguments for the need for restrictions on media freedom and the justifications. The three main research questions and their sub-components are introduced and a justification is made for the study of restrictions to publishing online. It also provides a background on the history of government from independence to-date and analyses how governance impacts on political freedoms. The chapter therefore, provides the background and context on which the study of media freedom on the web in Uganda is explored.

#### **1.0 Aim and focus of the study**

The media in Uganda currently comprises the print, broadcast and Internet platforms. The state-owned broadcast media in the form of Radio Uganda and Uganda Television dominated the industry until the liberalization of the airwaves in 1993. This paved way for private media enterprises to join the market. According to the November 2010 edition of *UCC News*, an online newsletter published by the Uganda Communication Commission, 222 FM radio frequencies had been issued. Of these, 192 were on air and 30 were not yet on air. On the other hand, 50 TV frequencies have been issued. Of these, 35 are operational

and on air, while 15 are not yet operational. Quoting Monica Chibita (2006)<sup>1</sup>, Minabere Ibelema and Tanja Bosch (2009) state,

*“the state monopolized broadcasting in Uganda until 1993, when liberalization policies were introduced. The subsequent increase in privately-owned FM stations gave Ugandans an opportunity to participate in through radio” (Ibelema and Bosch, 2009: 322).*

The major English newspapers in Uganda are the largely government-owned *New Vision*, and the privately-owned *Daily Monitor*, which are published daily. The privately-owned *Weekly Observer* is published thrice a week, while *The Independent*, a privately-owned news magazine, has two editions a month. The *Red Pepper*, which is the major tabloid in Uganda, is privately-owned and published weekly. *The East African*, an elite-targeted paper owned by the Nation Media Group is also published twice a week. The Nation Media Group conglomerate also owns *Daily Monitor*. The *New Vision* also publishes local language newspapers including *Bukedde*, a daily Luganda newspaper, and weeklies including *Orumuri*, *Etop* and *Rupinyi*. Other weekly English papers published in Uganda include *The East African Business News* and *The Sunrise*.

The development of the media industry in Uganda to its current state has, however, been faced with challenges as highlighted by Ibelema and Bosch (2009). They note, *“for a long period of time, Uganda was one of the most media-poor African countries. Economic, geographic, and infrastructural factors all contributed to the stunted growth”* (Ibelema and Bosch, 2009: 319).

Making reference to R. D. Kayanja (2002)<sup>2</sup>, they note, *“perhaps most detrimental to independent media development is Uganda’s authoritarian history”*, adding that, *“Until*

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<sup>1</sup> Chibita, Monica (2006). *Indigenous Language Programming and Citizen Participation in Ugandan Broadcasting: An Exploratory Study*. Unpublished doctoral dissertation, University of South Africa.

<sup>2</sup> Kayanja, R. D (2002). ‘The Current State of Media Reform in Uganda’, In Price, M. E., Rozumilowicz, B., and Verhulst, S. G. (eds.) (2002). *Media Reform: Democratizing the Media, Democratizing the State*, 155-179. Routledge. New York.

recently the Ugandan press was virtually an all-government affair. The state-owned *Uganda Times* was for long the dominant newspaper. Then the private press was “allowed to emerge in 1986” (Ibelema and Bosch, 2009: 319). This historical factor will be discussed in section 1.4 that provides a background to the political and social environment in which the media in Uganda operate.

The scholars observe that the post-1986 period saw a rise in government and privately-owned newspapers resulting in competition for audiences and a focus in profit but this was short-lived because by 1999, only two English-language dailies- the *New Vision* and *The Monitor* were publishing daily. The *New Vision* thus replaced the *Uganda Times* after President Yoweri Museveni, took over power in 1986, while *The Monitor* was established by journalists who reportedly left the *New Vision* after falling out with the management (Ibelema, and Bosch, 2009: 319).

Nevertheless, the print media industry in Uganda is gradually expanding although its growth cannot be compared to that of radio. This is evidenced in an article published by *The New Vision* on September 17, 2008 on newspaper circulations in Uganda. The article states that a study of the newspaper circulation was conducted by ABC, an international audit firm, from April to June 2008. The findings show that the *New Vision* had a daily circulation of 34,368 copies, *Daily Monitor* had 22,157 copies, while *Bukedde* had 14,898 copies daily<sup>3</sup>. The article did not provide circulation figures for the *Red Pepper*. Nevertheless, the figures of the three newspapers portray the general circulation figures, which are still relatively low given that Uganda has a projected population of 31.7 million according to the Population Secretariat<sup>4</sup>. The slow growth of the newspaper industry is attributed to challenges including high production costs, poverty, illiteracy and a poor reading culture in Uganda.

The Internet is a new medium of communication, especially for developing countries like Uganda. Jeremy, Harris Lipschultz (2000) defines the Internet as the first generation of

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<sup>3</sup> See <http://www.newvision.co.ug/D/8/220/650162>, accessed on March 7, 2011.

<sup>4</sup> A semi-autonomous government institution under the Ministry of Finance, Planning and Economic Development that coordinates the formulation and implementation of a comprehensive population policy.

interlocking networks of computers that have allowed individuals at the end of the twentieth century to engage in worldwide communication in forms that know no geographic borders... such communication began with text and progressed through a range of multimedia forms typified by the World Wide Web, the most common partition of cyberspace (Lipschultz, 2000:8).

Since its introduction over a decade ago, the Internet has grown as a medium of communication. For example, Internet use in Uganda grew from 0.2 percent to 7.8 percent of the population between 2000 and 2008<sup>5</sup>. The Uganda Communications Commission, in a report titled '*2009/2010 Post and Telecommunications Market Review*', stated that Internet subscriptions in Uganda increased from 27,600 to 29,800 users at the beginning of the review period, while mobile broadband connections were at an estimated 520,000 connections from 310,000 subscribers. The report noted that the increase translated into 3.5 million Internet users countrywide. These statistics signify increased use of the online media in Uganda, which in my view makes the study of the Internet in developing countries worth exploring.

The emergence of the Internet has changed the media landscape and is impacting on the way news is produced and consumed. Peter J. Anderson and Anthony Weymouth (2007) share this view of how the Internet is impacting on the production of hard news. They observe,

*"... there has been an 'information explosion' fuelled mostly by the Internet, whereby the manner in which the public receive and consume information has reduced the input by professional journalists"* (Anderson and Weymouth, 2007: 17).

The emergence of the Internet can be argued to have prompted traditional news to change their methods of news distribution in order to deal with the challenge of accessing audience. This has led most traditional print media houses to start online editions, and has also resulted in the rise of online-only news websites. Anderson and Weymouth (2007), reinforce this view when they contend,

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<sup>5</sup> See [http://opennet.net/research/profiles/uganda#footnote11\\_7czceq6](http://opennet.net/research/profiles/uganda#footnote11_7czceq6), accessed on November 24, 2010.

*“The emergence of new technologies such as the Internet have made further inroads into the market for the traditional printed word and indeed have caused newspapers to set up Web versions of their paper editions on a mixed subscription/ advertising basis” (Anderson and Weymouth: 2007:26).*

Most print and television media houses in Uganda have online editions. Radio is also picking up this trend, although only a few stations have web editions and can be broadcast online. Media houses with online-only editions include *Uganda Record*, *Uganda Correspondent* and *The Nile Times*.

The core role of the media is to provide information, educate and entertain. The media ought to be free in order to perform this role effectively. To understand why the media merit protection, it is important to gain an understanding of what the term free expression or freedom of expression means.

According to Lipschultz (2000), freedom of expression refers to the liberty by individuals to communicate openly without obstruction from legal, governmental, corporate or social forces (Lipschultz, 2000:8). Freedom of expression is a broad term that covers the spoken and written word, arts, performing arts and demonstrations. Like any other inalienable human right, freedom of expression is not absolute and is often subject to restrictions.

While freedom of expression is an individual right, the media claim the right because they provide a platform where views are exchanged and debated, thus providing an opportunity for individuals to form their opinion, strengthen it or change it altogether. The exchange of ideas on matters of public interest also contributes to the democratization process. According to Jacob Rowbottom (2009), the value of media freedom comes from the way it serves the interest of the public (Rowbottom, 2009: 234). This discussion will be elaborated in the section 2.2 that evaluates media and legal theory.

This is, however, not to say the media are not subject to limitations. Restrictions on media freedom exist and justifications on the enjoyment of this right vary across the globe depending on the existing legal, social and cultural setting. In advancing the argument for regulation of the media, Rowbottom quotes Professor Judith Litchenberg as saying,

*“Unlike freedom of speech, to which certain aspects of which our commitment must be virtually unconditional, freedom of the press should be contingent on the degree to*

*which it promotes certain values at the core of our interest in freedom of expression generally” (Rowbottom, 2009:234).*

In Uganda, the legal justifications or reasons advanced for limiting media freedom include protection of the individual’s right to privacy, protection from pornography, defamation, matters of national security and terrorism. These arguments will be discussed in chapters four and five that analyse the restrictions to publishing by news websites in Uganda and their impact on media output.

Rowbottom (2009: 235) however, argues that not all regulation of the media is justified. He states that the justification ought to serve democratic needs as has been discussed in section 2.2.2.1.

The legal provisions protecting and restricting media freedoms generally apply to the traditional print and broadcast media. However, with the Internet, the legal framework needs to be examined. Rowbottom states that it is necessary to ask whether the development of online expression, such as the Internet, changes why and how we should protect media freedom (Rowbottom, 2009:233). He notes that the precise model of regulation for the online media is yet to be formulated.

*“It has been argued that online expression should fit the print model, or is at least closer to that model, rather than the broadcast regulatory regime”. (Rowbottom: 2009:236).*

This argument by Rowbottom forms the basis of my research on news websites in Uganda. The focus of the study is on English-language news websites, which include the largely government-owned *New Vision* and the privately-owned *Daily Monitor*. The online editions are published daily. I will also analyse the *Red Pepper*, considered to adopt a tabloid format, the *Uganda Record*, an entirely online newspaper, and *Radio Katwe*, considered very critical of the present government. A discussion on how these websites were selected for the study is done in the methods chapter.

## **1.1 Statement of the problem**

The traditional media enjoy more protection in regard to freedom of expression in the legal framework as advanced by scholars like Lipschultz. He, however, states that the Internet is both a “broadcast” and “common-carrier” medium, and it defies traditional regulatory



models (Lipschultz: 2008:10). This view is reflected in a report by Pressreference.com on the status of the media in Uganda. The report states that the Internet poses a challenge for the control of media content,

*“In most national legal systems, legislation cannot keep up with technology. This is certainly the case in Uganda. The split-court decision in 2002 in the U.S. case Ashcroft vs. Free Speech Coalition concerning virtual child pornography would be seen in Uganda to be hair-splitting to the extreme, yet the Ugandan legal system—no more than the one in such an advanced democracy—cannot maintain pace with the creative technologies of those who would ply the public's most vulnerable sensitivities”*<sup>6</sup>

The aim of the study, therefore, is to explore the Ugandan approach to regulation of news and establish whether rules that regulate the traditional media can be extended to the Internet.

## **1.2 Research questions**

According to Zeno-Zencovich (2008), historically, the ‘freedoms’, political, public and civil, both ‘to print’ and ‘of the press’, have been subject to firm regulation as to when, where, how and to what extent they could be exercised (Zeno-Zencovich, 2008: 11). While some studies have been done on these restrictions on the traditional print and broadcast media, not many have been done on the online news media, especially in Uganda, where news websites are a relatively new media platform. The study will, therefore, explore this area by posing three main research questions:

### **1.2.1 What types of restrictions are imposed on news websites in Uganda?**

A restriction refers to a limit, constraint or restraint. The term restriction is used in the study to refer to that aspect that prevents, hinders or limits news websites from publishing their stories. James Glen Stovall (2004) defines a news website as a site devoted to delivering timely news and information to its audience. He explains that those who produce the site observe the traditional customs and practices of journalism in gathering, writing and presenting the news (Stoval, 2004: 16).

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<sup>6</sup> See <http://www.pressreference.com/Sw-Ur/Uganda.html>, accessed on February 27, 2010

Many conventional news organizations maintain websites which are almost exact replicas of their printed paper editions. In others, the content on the news websites and printed paper editions may vary. There are also news websites that are only web-based, which implies that they do not have paper editions. The study analyses news websites that have both web and paper editions and those news websites that are only web-based. The websites are discussed in the methods chapter.

The research question analyses the laws that guide the writing and publication of articles by news websites and reviews the legal suits brought upon news websites in publishing their articles. It examines non-legalised measures such as attempts at shutting down news websites over publication of articles. A review is also made of the editorial guidelines, social and technical restrictions to publishing by news websites in Uganda.

Having established what restrictions are imposed on news websites in publishing their articles, it is important to understand why the restrictions are in place. The study will analyse the justifications or reasons for the restrictions.

Zeno-Zencovich (2008) argues that that if it is accepted that freedom of expression like any other freedom is subject to limits, it appears necessary to provide a coherent and adequate framework for justifying such limits (Zeno-Zencovich, 2008: 12). To explore why legal, social, editorial and technical restrictions are imposed on news websites in publishing their stories, a second question is asked:

### **1.2.2 Why are restrictions imposed on news websites in publishing their stories?**

This question examines what purpose the laws serve, and why news websites are sued for publication of articles on their websites. It examines why there have been attempts to shut down news websites over publication of articles. The question also analyses the value of the editorial guidelines, and the implications for social and technical restrictions on publishing by news websites in Uganda.

### **1.2.3 How do the restrictions imposed on news websites impact on media freedom in Uganda?**

This question examines in what ways the legal, social, editorial and technical restrictions affect publishing by news websites, and how this impacts on the right to free expression online.

The three research questions, therefore, contribute to the discussion on the impact of legislation, editorial, societal and technical restrictions on online news publishing in Africa.

### 1.3 Justification of the study

There are examples of the legal measures being undertaken by the Government to regulate the traditional media in Uganda. This is evidenced in the constitutional provisions and court cases against media houses. However, legislation pertaining to the new media is scanty and so are the court cases and ruling pertaining to online news media. An example to illustrate this is the attempt by the Government to shut down *Radio Katwe*. An article by *The New Vision* in February 2006 stated that the ruling party, the National Resistance Movement (NRM) had written to a US-based Internet firm to block access to the *www.Radiokatwe.com* website. The article quoted the NRM spokesperson Ofwono Opondo as saying the website was publishing malicious and false information against the party and its presidential candidate, Yoweri Museveni, the incumbent. The article further mentioned that the newspaper had received complaints that the site was inaccessible within Uganda. It added that when opening the site, a message pops up saying, “*The page cannot be displayed*”<sup>7</sup>.

Reporters Without Borders<sup>8</sup> published a report in February 2006 titled, *Net censorship reaches sub-Saharan Africa*. The report criticised the Uganda Communications Commission for filtering content on *Radio Katwe* and referred to the incident as-the first such case of Internet censorship in Uganda. “*Blocking access to an online publication is an important decision, which should be taken only by a judge and then as a result of an independent judicial procedure*”<sup>9</sup>.

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<sup>7</sup> See <http://www.newvision.co.ug/D/8/13/482528>, accessed on February 27, 2011.

<sup>8</sup> A non-profit organisation which defends the freedom to be informed and to inform others throughout the world.

<sup>9</sup> See <http://en.rsf.org/uganda-net-censorship-reaches-sub-saharan-24-02-2006,16569>, accessed on February 27, 2011.

This example reflects the challenge governments' face in regulating Internet-based websites and also shows the challenge of access to sites based and set up outside a country's borders. The case occurred in 2006 and it is a sign of the growing importance governments in developing parts of the world will attach to sites seen to be critical of them and their attempts to clamp them down.

The July 11, 2010 bombings in Kampala, claimed to have been carried out by the al-Qaeda-linked al-Shaabab militants, can in my view also be said to have an impact on restricting free expression in the traditional media, as well as on the Internet. The grounds for fighting terrorism may be used to limit free expression in Uganda. It remains to be seen whether Uganda will come up with surveillance laws and technology like has been in the case in democratic states like the United States of America and the United Kingdom.

#### **1.4 Background to the political and social environment in which the media in Uganda operate**

This section provides a background for the study by analyzing the political and social and environment in which the media in Uganda operate.

Uganda aspires to be a democratic state as reflected in the Constitution adopted on September 22, 1995. Section II of the Constitution relates to democratic principles. Sub-section (i) states, *"The state shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance."*

In trying to analyse the democratic principles, guidelines will be drawn from the characteristics of what constitutes a liberal democracy that Helge Rønning (2009) draws from Wolfgang Merkel. These are outlined in sub-section 2.1.3.1 in the theoretical framework.

##### **1.4.1 System of governance: tracing governments from independence to-date**

Uganda attained independence on October 9, 1962, but maintains ties with Britain through the Commonwealth<sup>10</sup>. Yusuf Kalyango Jr. (2011) observes that unlike Tanzania and Kenya, British colonial rulers granted Uganda independence in 1962, without a struggle (Kalyango, 2011:20). The country adopted its first Constitution in the same year.

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<sup>10</sup> A voluntary association of 54 countries that support each other and work together towards shared goals in democracy and development.

Following independence, the country's Prime Minister, Dr. Milton Apollo Obote became Prime Minister while Mutesa II, the king of the Buganda kingdom<sup>11</sup>, became the ceremonial president in November 1963<sup>12</sup>. In a turn of events, Obote usurped all state powers and suspended the 1962 Constitution on February 22, 1966. He also abolished monarchies outlawed political parties<sup>13</sup>.

The political period of 1966 to 1986 in Uganda was characterised by military coups and civil war. Kalyango describes the situation at the time as a “political theater of military coups and mass killings” (Kalyango, 2011: 20).

To illustrate Kalyango's assertion, a brief discussion is done on the leadership in Uganda from 1966 to 1986. Obote's rule as President from 1967 was short-lived because he was later ousted in a military coup by his former army commander, General Idi Amin, on January 25, 1971. Amin then declared himself president and dissolved the parliament, giving himself absolute power. According to the background on Uganda on the US department of State website, Amin's rule was characterised by human rights abuses, ethnic- centered mass killings, terror and economic decline.

However, a combined team of Ugandan exiles, under the Uganda National Liberation Army (UNLA) and the Tanzania Peoples' Defense Force overthrew Amin in April 1979. Prof. Yusuf Lule took over as President in a rule that lasted only 68 days<sup>14</sup>. Godfrey Binaisa Paulo Muwanga took over leadership until general elections were organized by Military Commission in December 1980. The Uganda People's Congress (UPC) party was declared winner of the elections, which were claimed to have rigged and Obote became President for the second time. The country is reported to have plunged into further chaos during Obote's second five-year reign.

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<sup>11</sup> The largest traditional kingdom in Uganda based in the central region which includes Kampala, the capital city.

<sup>12</sup> See <http://www.ugandahighcommission.com/uganda-info-center/political-history>, accessed on June 2, 2012.

<sup>13</sup> <http://www.ugandahighcommission.com/uganda-info-center/political-history>, accessed on June 2, 2012.

<sup>14</sup> See <http://www.ugandahighcommission.com/uganda-info-center/political-history>, accessed on June 2, 2012.

A five-year guerrilla war launched by Yoweri Museveni's National Resistance Army (NRA) in 1981 in opposition to the rigged elections. Obote was again overthrown in a military coup by General Tito Okello on July 27, 1985 and he fled to exile in Zambia. Relative calm returned to Uganda when the NRA took over power on January 26, 1986 and Museveni was sworn in as president. Uganda then adopted the Movement System of Government.

President Museveni's leadership was credited for introducing significant reforms for the country's shattered economy and human rights record. The next part of the chapter analyses the political reforms in Uganda's strive to become a democratic state as outlined by Wolfgang Merkel (Rønning, 2009:47-48).

#### **1.4.2 The electoral process**

The NRM government amended the Constitution in 1995. Chapter five of the 1995 Constitution relates to Representation of the People. Article 59 prescribes the right to vote by citizens of 18 years and above, while Article 60 establishes an Electoral Commission (EC) appointed by the President with the approval of Parliament. Uganda could, therefore, be said to have a democratic electoral regime because Members of Parliament (MPs) are elected to office, all men and women are allowed to vote and stand for public office, and presidential and parliamentary elections are held after every five years. The last presidential and parliamentary elections were held in February 2011.

Nevertheless, the electoral system has had its challenges. For example elections have been criticised for not being free and fair. A report by the European Union (EU) observer team raised concern over administrative and logistical failures in the 2011 general elections. It noted that the power of incumbency was exercised to such an extent that it compromises the level playing field for opposition candidate. Edward Scicluna, the chief observer of the EU Election Observer Mission, is reported to have cited the lack of trust by stakeholders the electoral process and noting that despite the fact that the campaign was conducted in a

fairly open and free environment, the distribution of money and gifts by candidates especially from the ruling NRM party was inconsistent with democratic principles<sup>15</sup>.

### 1.4.3 Respect of political rights

Political rights such as freedom of expression and association are protected in Chapter Four of the 1995 Constitution. Ugandans largely enjoy the freedom to express themselves through participation in talk shows on the broadcast media, writing opinion articles in the print media and news websites, active membership on social network sites such as Facebook and Twitter, blogs and also taking part in demonstrations.

Nevertheless, this freedom is reported to be on the decline as noted in a report released by Reporters Without Borders in January 2012. According to the 2011 Press Freedom Index, Uganda dropped from 96 to the 139th position out of 170 countries surveyed worldwide. This decline was due to reports of increased acts of violence meted out on journalists by security agencies, and a crackdown by the government on opposition movements and independent media after the 2011 presidential and parliamentary elections<sup>16</sup>.

The attacks on journalists by security agencies culminated in their boycott of government activities. The boycott followed physical attacks on 14 journalists while covering the return to Uganda of the opposition Forum for Democratic Change<sup>17</sup> (FDC) leader Dr. Kiiza Besigye after receiving medical treatment in Kenya<sup>18</sup>.

Additionally, in a letter titled, “*We shall know them by their fruits*”, that was published by the *New Vision* and referred to by the *BBC*, President Museveni is reported to have referred to the independent and foreign media as enemies of Uganda’s recovery.

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<sup>15</sup> See <http://www.allvoices.com/contributed-news/8246790-uganda-elections-2011-elections-marred>, accessed on June 3, 2012.

<sup>16</sup> See <http://www.monitor.co.ug/News/National/-/688334/1314118/-/b1fdvaz/-/index.html>, accessed on June 3, 2012.

<sup>17</sup> The largest opposition party in Uganda

<sup>18</sup> See <http://hrnjuganda.blogspot.no/2011/05/ugandan-journalists-slap-boycott-on.html>, accessed on June 2, 2012.

*“The media houses both local and international such as Al-Jazeera, BBC, NTV, The Daily Monitor, e.t.c, that cheer on these irresponsible people are enemies of Uganda’s recovery and they will have to be treated as such,”<sup>19</sup>.*

The irresponsible people the President was making reference to were participants in the Walk-to-Work<sup>20</sup> campaign.

Furthermore, in 2009, riots broke out in Kampala and neighbouring regions central to the Buganda kingdom monarchy. This was after the Buganda king, Ronald Muwenda Mutebi II, was prevented from visiting his subjects in the neighbouring district of Kayunga. During the riots, the government shut down four radio stations, the most notable being the Central Broadcasting Services (CBS), that has links to the Buganda kingdom. The station was shut down over breaching “minimum broadcasting standards” in which its presenters were accused of inciting violence during the riots. The station was, however, reopened in 2009, on the directions of President Museveni<sup>21</sup>. The event raised questions of why the government and not the courts of law ordered the shutdown of station even if it had allegedly breached “minimum broadcasting standards”, as well as whether the decision to reopen the station was vested in the President.

There have also been cases of book seizures and the arrest of critical authors. In October 2010, the Government is reported to have seized a consignment of books by Dr. Olive Kobusingye, a sister to FDC leader Kizza Besigye. Kobusingye’s book titled: *“The Correct Line? Uganda under Museveni”* criticises the promises made by the NRM government from 1986. Kobusingye is quoted to have been of the view that her consignment of books was seized because it was anti-government<sup>22</sup>. Similarly, in September 2011, security operatives arrested Vincent Nzaramba, the author of a book titled, *“People Power- Battle*

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<sup>19</sup> See <http://www.bbc.co.uk/news/world-africa-13438336>, accessed on June 2, 2012.

<sup>20</sup> An initiative of opposition political parties and activists protesting high fuel and commodity prices.

<sup>21</sup> See <http://www.monitor.co.ug/News/National/-/688334/1043002/-/cltoj9z/-/index.html>, accessed on June 2, 2012.

<sup>22</sup> See <http://www.monitor.co.ug/News/National/-/688334/1029370/-/cmxivcz/-/index.html>, accessed on June 3, 2012.



*the Night General*'. The book reportedly criticizes the President and his NRM party. Police officer Ronald Ogen is quoted to have said they arrested Nzaramba because they fear the book will incite the public<sup>23</sup>.

#### **1.4.4 Civil rights**

Article 29(1)(d)<sup>24</sup> of the 1995 Constitution provides for the right of assembly, while Article 29 (1)(e)<sup>25</sup> provides for the right to associate. While the right to demonstrate is guaranteed in the Constitution, any group that plans to demonstrate is required to first seek clearance with the Police. Members of the opposition have clashed with the Police over their planned demonstrations. For example, in January 2010, the members of the opposition planned to hold a demonstration against the closure of CBS radio and the re-appointment of allegedly discredited officials at the EC. The Inspector General of Police (IGP), Kale Kayihura, reportedly said he was informed of the demonstration but the opposition members maintained that they informed him four days in advance<sup>26</sup>. The requirement that the Police are informed of any planned protests. While the measure to inform the Police of any protests is aimed at checking against violence, it can be argued that this is likely to infringe on the right to demonstrate since the same grounds can be used to halt stop the protests from taking place.

#### **1.4.5 Individual liberties**

Chapter four of the 1995 Constitution provides for several rights protecting the individual. These are fundamental and other human rights and freedoms and include such as the right to life, personal liberty, protection from inhuman treatment, the right to privacy and a fair hearing. One of the characteristics of a liberal democracy is one in which individual liberties are protected against violations from agents of both state and private powers. The

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<sup>23</sup> See <http://impunitywatch.com/?p=20421>, accessed on June 3, 2012.

<sup>24</sup> Every person shall have the right to- (d) freedom to assemble and demonstrate together with others peacefully and unarmed and to petition;

<sup>25</sup> Every person shall have the right to- (e) freedom of association which shall include freedom to join associations or unions, including trade unions and political and other civic organisations.

<sup>26</sup> See <http://www.monitor.co.ug/News/-/688324/836606/-/c6bajl/-/index.html>, accessed on June 3, 2012.

Ugandan Constitution largely provides for this protection of the individual. There have, however, been reports of human rights violations by security agencies. For example, the Rapid Response Unit (RRU), a unit of the Police Force, was disbanded in December 2011 over concerns of human rights violations by its operatives. Human Rights Watch cited a case in which of two suspects who was manhandled during interrogation died while in custody at the RRU headquarters<sup>27</sup>. While the RRU dealt with suspects, it faced criticism over the manner in it dealt with them during interrogation, raising questions about the rights of those accused of breaking the law.

#### **1.4.6 The Arms of Government (accountability and separation of powers)**

There must be horizontal accountability and separation of powers- executive, legislative and judicial. This ensures that elected officials are able to rule effectively

The Government comprises three arms; the legislature (Parliament), Executive (Cabinet) and the Judiciary. In a liberal democracy, there must be horizontal accountability and separation of powers in these three arms of government. A review is done of the Ugandan government with this consideration below:

##### **1.4.6.1 The Legislature**

The members of the 9<sup>th</sup> Parliament of Uganda were elected during the February 2011 parliamentary elections. There were 378 MPs in Parliament in 2012. The ruling NRM party had the majority share with 216 members, while FDC had 29, UPC 12, DP nine, Justice Forum (JEEMA) and the Conservative Party (CP) each have one representative in Parliament. The remaining 28 MPs were independent members, implying that they did not represent any political party<sup>28</sup>. With a majority membership, the NRM has been criticized for influencing voting patterns. An example was during the NRM backed vote that amend the Constitution in 2005 leading to the removal of presidential term limits.

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<sup>27</sup> See <http://www.monitor.co.ug/News/National/-/688334/1286562/-/bg5ugez/-/index.html>, accessed on June 3, 2012.

<sup>28</sup> See <http://www.ekimeeza.com/2011/03/28/uganda-parliament-to-house-378-mps-from-333-in-the-9th-august-house/>, accessed on June 3, 2012.

*“In 2005, the Seventh Parliament controversially removed term limits, after each NRM MP pocketed Shs5 million, paving the way for President Museveni’s campaign to seek a third elective term in the 2006 general election. The removal was supported by 222 votes to 37, and two members abstained. The MPs, then, amended Chapter Seven of the Constitution by repealing Article 105(2). This gave way to the possibility of presidents ruling for life in case they choose to use the power of incumbency for their benefit”<sup>29</sup>.*

There have, however, been occasions in which some NRM MPs have been opposed to the party position in Parliament, consequently earning themselves the title of ‘rebel’ MPs<sup>30</sup>. Nevertheless, while a few NRM MPs may criticise the party actions and position on discussions in Parliament, the influence of the party’s majority membership in Parliament is worth taking note of.

#### **1.4.6.2 The Judiciary**

According to Article 142 of the Constitution, the President appoints senior judges including the Chief Justice, deputy Chief Justice, justices of the Supreme Court, Court of Appeal and the High Court on the recommendation of the Judicial Service Commission.

Article 128 (1)<sup>31</sup> and (2)<sup>32</sup> of the Constitution provide for the independence of the Judiciary. It can be argued that the Judiciary in Uganda has relative freedom to perform its role. This is based on some cases in which they have made ruling on that had not been favour of the Government. An example is the case in which the Constitutional Court outlawed the law of sedition in the Penal Code on grounds that it contravened Article 29 of

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<sup>29</sup> See <http://www.monitor.co.ug/News/National/-/688334/1391906/-/avjyfkz/-/index.html>, accessed on June 3, 2012.

<sup>30</sup> See <http://www.newvision.co.ug/news/314770--Museveni-created-rebel-MPs-.html>, accessed on June 3, 2012.

<sup>31</sup> In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority.

<sup>32</sup> No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions.

the Constitution, which guarantees free speech and free press. This case is discussed in chapter four and five.

However, the Chief Justice, Benjamin Odoki, has alluded to the lack of independence by the Judiciary in African states. He is quoted to have told the annual Southern African Chief Justices Forum held in Kampala in September 2011 that,

*“In Africa, interference in the Judiciary space has been most pronounced in the state refusing to obey and enforce decisions of the court, open attacks on the Judiciary, storming of the judiciary like it happened in Uganda in 2005, poor facilitation of the judiciary and delay to appoint judges”*<sup>33</sup>.

Odoki’s remarks highlight the challenge of interference and lack of funding that African governments like Uganda grapple with in interpreting the law, adjudicating in cases and ensuring that justice is served much the law provides for their independence

#### **1.4.6.3 The Executive**

Members of the Cabinet are appointed by the President. They are all affiliated to the ruling NRM party. While the arms of government should work independently, the Executive has been criticized for interfering with the work of the legislature. For example, FDC president Kizza Besigye has referred to Parliament as a rubber stamp for President Museveni<sup>34</sup>. The President is also vested with powers to appoint the leaders of independent institutions such as the Electoral Commission<sup>35</sup> and Judicial Service Commission, which has led to criticism of impartiality of some the institutions. Therefore, while the law provides for the separation of power, it can be argued that the influence of the institution of the presidency in governance is worth taking note of.

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<sup>33</sup> See <http://allafrica.com/stories/201109110036.html>, accessed on June 3, 2012.

<sup>34</sup> See <http://www.ekimeeza.com/2011/03/28/uganda-parliament-to-house-378-mps-from-333-in-the-9th-august-house/>, accessed on June 3, 2012.

<sup>35</sup> See <http://www.monitor.co.ug/News/National/-/688334/864258/-/wik67c/-/index.html>, accessed on June 3, 2012.

## **1.6 Synopsis of the individual chapters**

The Introduction provides the motivation and presents arguments in favour of the study of freedom of expression on the web. This chapter provides the context and research questions that guide the study of restrictions to publishing by news websites in Uganda. The chapter traces the system of governments from independence to-date. It also provides a critique of the democratic reforms by the current government and their implication for human freedoms like free expression.

Chapter two provides the theoretical framework by introducing key concepts and variables that will guide the interpretation and analysis of data. This chapter also contributes to the research process by showing the significance of the study for the advancement of theory given that it is conducted in the setting of a developing country.

Chapter three focuses on the methodological approach for the study. A case is made for the use of the qualitative approach to data collection by means of document analysis, an analysis of websites and interviews. The chapter also discusses and documents the data collection process. Data is analysed according to the main research questions, through meaning interpretation and a theoretical reading.

Chapter four examines how legislation sets up restrictions to publishing by news websites in Uganda. It reviews the laws and what purposes they are formulated to serve.

Chapter five provides a discussion on the legal, social, editorial and technical restrictions to publishing by news websites in Uganda. It also tries to demonstrate how these limitations impact on the publication of news online.

The conclusion provides a summary of the goal of the study. It evaluates the key findings of the study and the state of media freedom on the web in Uganda.

## **CHAPTER TWO**

### **THEORETICAL FRAMEWORK**

#### **2.0 Introduction**

The theoretical approach is an integral part of a research process because it enables a researcher to formulate and discuss key concepts and variables that guide the interpretation and analysis of data collected as highlighted by Susanna Horning Priest (2010).

*“The usefulness of theory is evaluated in terms of its ability to help you understand the phenomena you observe. Thinking theoretically is, in qualitative work, an integral part of the process of data analysis (Priest, Susanna Horning, 2010: 162).*

The theoretical framework provides an understanding of the value of free expression and why it deserves protection. It delves deeper in understanding why the media merit protection based on the role they perform in expanding free expression, and their contribution to a democratic process. The chapter analyses the legal, economic, social and technical boundaries to free expression on the Internet, and considers the justifications (reasons given, cited or made) for the restrictions. It also assesses the opportunities and challenges the Internet presents for developing countries like Uganda. The discussion in the theoretical chapter provides a better understanding, as well as the analytical tools, to interpret the data collected through interviews and an analysis of documents.

#### **2.1 The concept of free speech/ free expression**

The understanding of the concept of free expression is a starting point in analysing why free expression is valued. The main arguments advanced for protecting free expression are the promotion of tolerance, individual autonomy, and the advancement of democracy.

##### **2.1.1 Individual liberty/ autonomy**

John Stuart Mill is a classic advocate for the protection of freedom of speech on grounds that it enhances individual liberty or autonomy. Autonomy relates to the process by which an individual forms his or her own opinions, values and arguments. Mill’s book *On Liberty* was published in 1859. The book has been reviewed by scholars, including Eli Skogerbø (1996), who notes that Mill’s discussion is centered on liberty of the individual, in particular, liberty of expression and thought.

*“... the foundation of Mill’s argument, if any, is individual rights. The individual is conceived of as having an inalienable right to express his or her opinion” (Skogerbø, 1996:74).*

Mill also makes the argument that a consequential further benefit of having individuals express themselves freely is for truth to be realised. The infallibility argument advanced by Mill in his defence for individual autonomy is also cited by Skogerbø and Nigel Warburton (2009). Skogerbø highlights Mill’s argument that the risks for infallibility are threefold; (i) any opinion restricted and silenced may turn out to be true, (ii) even false opinions may contain some grain of truth... and the only method available to prove the truth or falsity of an opinion is to confront it with contradictory views in a free and open discussion, and (iii) even opinions that are true degenerate in prejudices if not challenged (Skogerbø, 1996: 74-75).

Warburton also reiterates the infallibility argument advanced by Mill that no matter how certain someone is that they know the truth, their judgment is still fallible. He adds that the *“process of lively debate with opinions from different sides will reinvigorate views that might otherwise be held in an unthinking way” (Warburton: 2009:25).*

The power of speech is an integral part of an individual’s wellbeing. Free speech enables individuals to share their views, hopes, fears and criticism, as well as expose them to views and opinions by others. The argument of individual autonomy is used to show the advantages of free speech to the individual and also point to dangers (fallibility) that are bound to arise when it is restricted.

### **2.1.2 Promotion of tolerance**

John Locke is argued to have been one of the early cited writers to advocate for tolerance, among other things, much as he largely focuses on religious tolerance in his works, *Epistola de Tolerantia*, published in 1689 and translated in English to *A Letter of Toleration* in 1690 (Skogerbø, 1996: 69). Skogerbø observes that while Locke’s text is centered on the right of the individual to hold opinions, creeds and convictions, and the argument against the state’s right to intervene with matters of concerning conscience, there are passages in the text that may be read as an argument for tolerance of opinions

altogether. Nevertheless, Skogerbø highlights the fact that the text contains an important argument on toleration and on the role of the state that has implications for the discourse on liberty of expression (Skogerbø, 1996:70). By reflecting on Locke's text in this context, the aim is to highlight the argument that free speech is valuable because it is deemed to result in tolerance of diverging views by individuals.

Petäjä cites the tolerance argument in his reference to American legal scholar and educator Lee Bollinger<sup>36</sup> who maintains that freedom of speech promotes tolerance. Bollinger is cited as making argument that when individuals are exposed to views contrary to those they hold, they eventually learn to live with and tolerate views contrary to their own (Petäjä, 2009:28).

In my view, the suggestion that free speech promotes tolerance is debatable. I agree that exposure by individuals to alternative views enables them learn to appreciate the fact that not all people are the same and that some may have viewpoints that can be annoying. These individuals can be said to learn to live with (tolerate) different viewpoints despite the fact that they are offended by these views. On the other hand, it does not necessarily imply that exposure to offensive ideas will make individuals tolerant of them. On the contrary, they could become more offended or intolerant by continued exposure to these views. Nevertheless, the tolerance argument is vital because it shows the importance of free speech to individuals in a society characterized with differences; beliefs, values, ideals and way of life.

### **2.1.3 Promotion of democracy/self-government**

Another justification for the protection of free expression is the promotion of democracy. Petäjä (2009) discusses the democracy argument put forward by American constitutional scholar Alexander Meiklejohn<sup>37</sup>. The gist of Meiklejohn's argument, presented by Ulf Petäjä (2009) is that citizens who have freedom of speech have the ability to rule, make informed and wise decisions, and hold those in power accountable.

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<sup>36</sup> Bollinger, Lee C. (1986). *The Tolerant Society*. Oxford University Press, New York.

<sup>37</sup> Meiklejohn, Alexander (1948). *Free Speech and Its Relation to Self Government*. Harper and Brothers. New York.



*“If citizens are able to rule, they must be able to communicate freely, not least with those charged to enact public will. They must also be free to criticise the judgments made and decisions taken by those in government (Petäjä, 2009:26).*

Warburton (2009) refers to Ronald Dworkin who argued that free speech is essential because it promotes open debate and discussion by citizens on matters of governance and thereby legitimizes democracy.

*“Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process, and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be” (Warburton, 2009: 3-4).*

Meiklejohn makes the assumption of citizens in ‘a true democracy’, while Warburton refers to a ‘democratic process’. An understanding of these concepts is essential in appreciating the democracy arguments they advance for the protection of free speech. The next part of the discussion will try and define the concept ‘democracy’ and its forms.

### **What is democracy?**

This sub-section provides an understanding of the contested concept of democracy. It demonstrates the difficulty in finding an agreement on the concept but nevertheless it is vital in understanding its relevance in value of free expression.

#### **2.1.3.1 Liberal democracy**

Sarah Chiumbu (1997) notes that the concept and practice of democracy is traced to ancient Greece. The model involved direct participation of citizens in state affairs. She, however, criticises the system for excluding women and slaves in the political process (Chiumbu, 1997: 30).

Chiumbu also traces the idea of liberalism to Western Europe where human beings were recognised as individuals with rights. It is on these foundations that the concept of a liberal democracy was founded that came to characterise the system of governance in several countries in the West.

Helge Rønning (2009) presents five characteristics from Wolfgang Merkel<sup>38</sup> of what an ideal democracy contains. These characteristics are drawn from the liberal form of democracy:

- 1) There must be a democratic electoral regime consisting of elected officials; inclusive and general suffrage; the right for all to stand as a candidate; and a free, fair, transparent and coherently organised electoral process.
- 2) Basic political rights such as freedom of expression and association must be respected.
- 3) Basic civil rights must be upheld, such as equality before the law.
- 4) Individual liberties must be protected against violations from agents of both state and private powers.
- 5) There must be horizontal accountability and separation of powers- executive, legislative and judicial. This ensures that elected officials are able to rule effectively (Rønning, 2009:47-48).

The characteristics above can be said to provide a guideline of what constitutes a liberal democracy. Most countries that consider themselves as liberal democracies strive to attain these benchmarks. However, in my view this is an ideal situation because even the most liberal of countries such as the US do not meet all the above mentioned benchmarks as will be highlighted in the discussion on legal theories and freedom of the press. Despite this observation, these characteristics are used to provide a framework for understanding liberal democracies. The study relied on these characteristics to analyse the political and social environment in Uganda's strive for democratic principles as discussed in section 1.4.

### **2.1.3.2 Popular democracy**

The liberal democracy model has been criticised by some African scholars who have argued that the concept of individual rights, constitutionalism, separation of powers are not compatible with Africa's historical and political reality as highlighted by Sarah Helen Chiumbu (1997). Chiumbu evaluates the argument by Tanzanian lawyer and academic Issa

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<sup>38</sup> Merkel, Wolfgang (2004). "Embedded and Defective Democracies", *Democratization*, Vol.11, No.5. December 2004. Pp. 34-58.

Shivji<sup>39</sup> (1991) who presents a second model, the new or popular democracy (Chiumbu, 1997: 37-38). This form is characterised by direct representation and mass participation rather than indirect political representation. Chiumbu also cites other African scholars in favour of this model like Kenyan academic Anyang' Nyong'o<sup>40</sup> (1992) argues that the notion of democracy was imposed on Africa in the form of constitutions, but that post-independent African societies have a democratic heritage in the struggle for independence itself (Chiumbu, 1997:39). Chiumbu's review of the arguments by scholars like Shivji, and Nyong'o is aimed at highlighting that although individual rights and freedoms are central to any democratic existence, they do not constitute the essence of democracy. The gist of the argument Chiumbu makes is that any discussion of democracy in Africa cannot ignore the reality of the colonial and post-colonial situation (Chiumbu, 1996: 40). This is why the study traces the background to the political situation in Uganda by analyzing the system of government in Uganda from Independence to-date.

#### **2.1.3.3 Beyond the models: the value of democracy**

The aim of this sub-section is not to go into a detailed discussion of the various forms of democracy that have evolved over the years but rather to show its value; it rests on the foundation that people being governed, whether directly or indirectly, have a voice in matters that affect their lives and that their thoughts, opinions and fears impact on those that govern them. Therefore, for citizens to communicate their views and attitudes to those that govern them, they must have freedom of speech but also the freedom to access information about the powers that be in order to make informed and wise decisions on matters of governance, thus the link between free speech and self-governance.

#### **2.1.4 Free speech and the media: what is the correlation?**

The discussion has so far tried to define the concept of free expression through reviewing the arguments advanced for its protection. An examination of the concept democracy has

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<sup>39</sup> Shivji, Issa (1991). "State and Constitutionalisation in Africa: A New Democratic Perspective," In Shivji, Issa (ed.) *State and Constitutionalism: An Africa Debate*, SAPES Trust, Harare.

<sup>40</sup> Anyang' Nyong'o, P. (1992). "Democratisation Process in Africa," In *Surviving Democracy?* Review of African Political Economy, July, No. 54.

also been made by reviewing discussions from scholars from the West and those from Africa. There is need to analyse how the media fits in the key concept of free expression. This sub-section aims at establishing the link between the concept of free expression and the media.

## **2.2 Theories of the media**

This sub-section discusses theories on the media- free press theories, legal theory and new media. The discussion on free press focuses on why the media merit protection based on its function in society. The legal framework reviews instruments that protect free expression and press freedom. It defines the boundaries for the enjoyment of this constitutionally protected right. The discussion on new media focuses the contribution of the Internet to promoting free expression, debate and alternative viewpoints. It also analyses the legal, technical and economic restrictions to expression on the Internet.

### **2.2.1 Free press theories**

Free press theories relate to arguments provided in defence of press freedom. This sub-section explores the justification for press freedom provided by key early scholars like John Milton and Jeremy Bentham. It reflects on the justifications of press freedom by contemporary scholars like Anine Kierulf and Vincenzo Zeno-Zencovich. Furthermore, a review was done on the criticism of the media as business enterprises with vested interests, hence the need to limit media freedom as argued by Professor Judith Lichtenberg.

#### **2.2.1.1 Early theorists: state controls suppress ideas**

John Milton is cited as one of the earliest and key defendants of freedom of the press. In his speech to the English Parliament in 1644 titled, *Areopagitica*, Milton criticised the Licensing Order of 14 June 1643 that was aimed at censorship before printing. His justification was based on the argument that suppressing texts before they reached the public meant the risk of suppressing justified opinions as well as unjustified ones (Skogerbø, 1996:66). Milton was, therefore, opposed to prior restraint since it did not give ideas the opportunity to rise and be challenged. Others who opposed censorship for the press was Jeremy Bentham who viewed censorship as an instrument of despotism (Skogerbø, 1996: 73) Chiumbu (1997), thus notes that freedom of the press was essentially a struggle against state controls such as censorship and taxation.

*“Early English liberals such as Jeremy Bentham, James Mill and John Stuart Mill viewed a free and independent press as an important safeguard against despotism and abuse of state power and they believed that it would play the role of a critical watchdog”* (Chiumbu, 1997: 47).

Establishing clear cut reasons in defence of freedom of expression and freedom of the press is not a simple task since the arguments made are similar. Skogerbø takes note of this challenge when discussing the works of early theorists. She observes that in the early texts that concern liberty of expression, for example Milton’s *Areopagitica*, Locke’s *Letter on Toleration* and even Kant’s *What is Enlightenment?*, no distinction can be drawn between the defences of liberty of expression as a right of the autonomous individual and liberty of the press, which can also be interpreted as a property right (Skogerbo, 1996: 64-65).

Criticism has been made of the media as business entities with interests to promote. Scholars like Zeno-Zencovich have observed that while the press performs key functions, they are business enterprises. He observes that freedom of the press does not necessarily equate to freedom to publish (Zeno-Zencovich, 2008: 9). Other scholars like Judith Lichtenberg (1990) have argued that the media’s right to publish is a disguised property claim (Lichtenberg, 1990: 120).

Zeno-Zencovich and Lichtenberg raise concerns about interests served by media houses given that they are business enterprises. The ‘claim of editorial autonomy’ that Lichtenberg refers to may in some situations be used by media houses to prevent a check of their activities. This sub-section on free press theories examines the justifications provided for restricting publishing on news websites and relates it to the arguments for press freedom. The criticism of the media as business enterprises with vested interests as cited by scholars like Lichtenberg is also vital for the study because it will be relied on in analyzing the implications of ownership – government and privately-owned media- for some news websites on publishing.

### **2.2.1.2 Providing information and extending free expression**

The media are vital in providing information and a platform through which ideas are circulated. This view has been cited by contemporary scholars like Anine Kierulf (2009) as why the media merit protection.

*“The media function both as an extension of this individual opportunity of expression, as a channel through which such expressions can be spread more broadly, and as a provider of information and ideas that constitute the basis of new individual thoughts and expressions that form society”* (Kierulf, 2009: 53).

A similar justification strategy for press freedom is made by Vincenzo Zeno-Zencovich (2008) who highlights the crucial role of the media in providing a platform for the exchange of ideas and in producing and distributing news (information). It is on the basis of this function that he calls for the removal of boundaries that make the gathering, processing and distribution of news difficult (Zeno- Zencovich, 2008: 16).

### **2.2.1.3 Watchdog function of the media**

The media also perform the watchdog role. This entails investigating and reporting on the activities of elected officials, as well as those who hold public office. This is a key component of democracy because it enables citizens to be informed of the activities, achievements and wrongdoing of those they elect to public office in order to make informed choices.

## **2.2.2 Legal theory and freedom of the press**

Legal theory guarantees the right to expression one hand but prescribes conditions or terms for the enjoyment of the freedom. It defines the legal boundaries of free expression. A review of the legal theory provides an understanding of what restrictions the law imposes on news websites in Uganda in publishing their articles, and reviews the justifications for the restrictions.

### **2.2.2.1 Constitutional protection and boundaries of free expression and media freedom**

Freedom of expression is an inalienable human right. According to Helge Rønning (2009), these rights are codified in various declarations of human rights, but such declarations are

legally binding only to the extent that they are ratified and incorporated into signatory states' constitutions and statutes (Rønning, 2009: 16). Examples include the First Amendment to the United States Constitution<sup>41</sup> and Article 29(1)(a) of the 1995 Uganda Constitution<sup>42</sup>.

While the legal provisions cited above guarantee the right to free expression, they set conditions for the enjoyment of this right. Limitations to media freedom and other human rights and freedoms are prescribed in Article 43 (1)<sup>43</sup> of the Ugandan Constitution. Subsection (2) (c) of the article states that public interest shall not permit,

*“...any limitation of the enjoyment of the rights and freedoms prescribed by this Chapter beyond what is acceptable and demonstrably justifiable in a free and democratic society, or what is provided in this Constitution.”*

Furthermore, Article 41 (1) of the Ugandan Constitution guarantees the right to access of information<sup>44</sup>. Sub-section (2) of the Article, however, sets limitations on what information can be accessed<sup>45</sup>. Other legal provisions such as those in the Penal Code provide limitations to the enjoyment of the right to free expression as outlined in Article 29 (1 of the Constitution that provides for free expression and access to information in Article 41(1). Examples of limiting provisions in the Penal Code are Chapter 17 that deals with defamation, Sections 39 and 40 that relate to sedition and Article 26 on terrorism as has been discussed in chapters four and five.

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<sup>41</sup> “Congress shall make no law...abridging the freedom of speech, or of the press, or of the people peaceably to assemble, and to petition the Government for a redress of grievances”.

<sup>42</sup> “Every person shall have the right to – (a) freedom of speech and expression which shall include freedom of the press and other media;”

<sup>43</sup> “In the enjoyment of the rights and freedoms prescribed in this Chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.”

<sup>44</sup> “Every citizen has a right of access of information in the possession of the State or any other organ or agency of the State except where the release of information is likely to prejudice the security or sovereignty of the State or interfere with the right to privacy of any other person”.

<sup>45</sup> Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.

The US Constitution states, “*Congress shall make no law...abridging the freedom of speech or of the press...*” This would imply a situation in which there are no laws limiting free expression and the press but this is not the case. For example, the USA PATRIOT Act (H.R. 3162). The Act was signed into law by President George W. Bush on October 24, 2001. It aims “*to deter and punish terrorist acts in the United States and around the world, to enhance law enforcement investigatory tools, and for other purposes*”<sup>46</sup>. This legislation came into force shortly after the September 11, 2001 attacks in the US. Nancy C. Cornwell (2004) notes that heightened security resulting from the terrorist attacks of September 11, 2001, and the invasion of Afghanistan and Iraq have changed the degree of press access to governmental activities related to terrorism (Cornwell, 2004: 186).

*“The USA PATRIOT Act (H.R. 3162), for example, weakens privacy protections for electronic communications, allowing the government to monitor communications more easily. Immigration and Naturalization Service (INS) hearings, previously open to the public, have become closed for security reasons, and INS records have been sealed.”* (Cornwell, 2004: 186).

The example of the USA PATRIOT Act shows that in cases of crises, such as the wake of the terrorist attacks, liberal countries come up with laws that may restrict media access and freedom. This also applies to matters of national security. It shows that despite laws allowing for the access of information, the media are still restricted in accessing information on the activities of governments. This serves to show that Uganda is no different. Media freedom is also limited by legislation on terrorism, and on matters of national security.

The discussion on the legal framework highlights that free expression is not absolute, but subject to restrictions. Scholars on African media like Professor Guy Berger (2007)<sup>47</sup> argue that while restrictions on free expression exist, they must be legitimate and justifiable.

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<sup>46</sup> See <http://epic.org/privacy/terrorism/hr3162.pdf>, accessed on March 25, 2012.

<sup>47</sup> See <http://unesdoc.unesco.org/images/0015/001570/157072e.pdf>, accessed on March 24, 2012.



*“...Freedom of expression may not be restricted merely because a certain statement or form of speech is considered “offensive” or because it challenges established doctrines. Indeed, it is sometimes argued that the real test of free speech is when speech offends some parties — and that this is seen as a price worth paying because it is a preferable situation to having governments define what is acceptable or not according to their perspectives” (Berger, 2007: 18).*

The study reviews whether the legal instruments governing publication by news websites in Uganda are clearly spelt out, and whether they are justified based on the arguments advanced in favour of the restrictions.

### **2.3 New media and free expression**

The next part of the chapter reviews discussion on the role of the Internet in extending free expression, encouraging debate and providing an opportunity for alternative viewpoints to emerge. It also analyses the legal, technical and economic restrictions to expression on the Internet with emphasis on developing countries like Uganda.

#### **2.3.1 The Internet extends individual freedom of expression**

The Internet has been viewed as an interactive two-way platform that extends freedom of expression. Scholars like Helge Rønning (2009) note that,

*“...the Net has been hailed as an inherently democratic means of communication. This is largely due to the fact that the Internet provides a participatory interface and a two-way flow of information between many different users simultaneously. It creates virtual spaces where communities without borders from around the world can enter into virtual communication with each other...” (Rønning, 2009: 10).*

Rønning further notes that the Internet has contributed to the democratization process of Africa (Rønning, 2009: 16). This refers to the process by which citizens are informed and debate about issues of governance. It also refers to the process through which citizens can keep a check and criticize the actions of those in elected office.

From Rønning’s observation, it can be observed that the Internet has the advantage of promoting interaction and the exchange of ideas and information between two or more

people at the same time instantly. This feature is prominent on chat rooms and social networking sites such as Facebook and Twitter. News websites the world over and in Uganda have links to such sites because they provide a platform through which to further set the agenda and promote discussion on issues covered by the websites. The social networking sites also provide sources of information for media houses.

The Internet has provided an additional platform for information to be relayed to the public, as well as alternative viewpoints. Since websites can be said to exist in virtual spaces, it can be argued that they have provided a platform for those who would want to relay information that may be deemed 'politically or socially-incorrect' to do so. The special case of two websites- *Uganda Record* and *Radio Katwe*- illustrate the issue of alternative view points and virtual spaces for the study.

Zeno-Zencovich (2008) argues that the Internet has resurrected the notion of freedom of expression as an individual liberty.

*“this concept has become essentially emptied of substance with the need for complex structures of communication- newspapers, radio and television- beyond the reach of individuals... Freedom of expression certainly existed, but it was confined to those few individuals in whose hands media control was concentrated and they had the power to decide, on economic grounds, which ideas were to be widely circulated and which were not”* (Zeno-Zencovich, 2008: 100).

He further observes that the pattern of dominance of the traditional media in controlling what ideas were to be disseminated changed with the advent of the Internet.

*“A new pattern has emerged where, while these traditional organs remain dominant, possibilities now exist for individuals to disseminate their ideas independently of them. This is not merely a question of economics, despite the gulf between the cost of setting up a publishing or broadcasting business and the cost of setting up a website. (Zeno-Zencovich, 2008:100).*

The gist of Zeno-Zencovich's argument is that the advent of the Internet has minimised the dominance of the traditional media as the sole provider of news and a platform for debate and the exchange of ideas. He further notes that it is much easier and less costly to start a news site as opposed to starting a print or broadcast media house. This means that

individuals can start and run news websites and rival with traditional news media in providing information. An example is the *Uganda Record* run by journalist Timothy Kalyegira. Individuals run their own blogs, and provide news on their facebook pages or Twitter accounts which trigger debate. Thus, Zeno-Zencovich's view about the Internet changing the pattern of dominance of traditional media is valid to an extent. However, it can also be argued that while independent news websites run by individuals exist, the traditional media are still the largely dominant provider of news, information and debate, at least in the Ugandan context. This dominance has been further increased by the major conglomerates such as the Vision Group and The Nation Media Group which have increased ownership across all platforms, including the Internet, as has been discussed in the Methods chapter.

### **2.3.2 Increased access in terms of reduced set-up and running costs? Or access restrictions in developing countries?**

Western scholars like Zeno-Zencovich also note that the cost of accessing the Internet and publishing news online is relatively lower in comparison to starting up print and broadcast platforms (Zeno-Zencovich, 2008: 100).

The question of cost is an economic consideration in publishing. It can encourage or restrict publication and this is why it is considered for the study. Zeno-Zencovich makes the argument that low start-up and running costs, as well as other legislative requirements of the Internet has enabled individuals start up and run news websites. This is in comparison to the print and broadcast platforms. However, the question of cost should take into consideration the context of the society in which the Internet is established. Some scholars who have studied the African context cite poverty, illiteracy and high Internet access costs as challenges to its development on the continent.

Poverty is one of the major challenges cited by Professor Arnold S. de Beer (2001)<sup>48</sup> to the development of the Internet.

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<sup>48</sup> See, <http://www.tandfonline.com/doi/pdf/10.1080/02560240185310111>, accessed on March 5, 2012.

*“In many sub-Saharan African countries poverty is severe and simple survival is a challenge, leaving no means for access to a relatively expensive medium of communication like the Internet. Even learning to read is a luxury that many cannot afford, which again impedes access to, as well as the use of the Internet.”*<sup>49</sup>

According to the United Nations Development Programme (UNDP), 31% of the Ugandan population lives on below US\$1 a day<sup>50</sup>. Furthermore, inflation rates are also high. According to the Uganda Bureau of Statistics (UBOS), the annual headline inflation rate for the year ending February 2012 dropped slightly to 25.4% from 25.7% recorded for the year ended January 2012<sup>51</sup>. Inflation refers to a situation whereby the prices of goods keeps increasing despite a change in the income, resulting in more money required to purchase similar amounts of goods. Poverty, expounded by high inflation rates, are likely to impact on the public’s ability to access media products such as newspapers or online Internet connections to access news websites. For the publishers, it also means fewer visitors to a site and probably high maintenance costs.

Rønning (2009) notes that Internet penetration in most African countries is low. *“Even in South Africa, the Internet is only used by 11.6% of the population. Only 5.3% of the entire African population has access to the Net.”* (Rønning, 2009: 11).

Uganda also has relatively low internet penetration. According to Synovate, a market research firm, only 3.2 million Ugandans, representing 9.6 per cent, have access to internet, out of a population of 31 million. Furthermore, the illiteracy level in the country is about 27 per cent according to the UBOS<sup>52</sup>.

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<sup>49</sup> Löwstedt. A. (1999). *Serious challenges and new promises*. In International Press Institute (IPI), World Press Freedom Review, (pg 6-7. ) Vienna. IPI.

<sup>50</sup> See <http://undpuganda.digitalvision.co.ke/focusarea/3>, accessed on March 10, 2012.

<sup>51</sup> See <http://www.ubos.org/onlinefiles/uploads/ubos/cpi/cpifeb2012.pdf>, accessed on March 15, 2012.

<sup>52</sup> See <http://allafrica.com/stories/201104110897.html>, accessed on February 17, 2012.

Rønning also cites slow Internet connections and narrow bandwidths as challenges to access to the Internet in Africa (Rønning, 2009:14). Nevertheless, the Internet speeds in Uganda are improving due to initiatives such as the National Data Transmission Backbone Infrastructure and e-Government Infrastructure (NBI/EGI) project for high speed communications. The fiber optic cable is aimed at linking Uganda to the submarine cables on the East African coast providing access to the rest of the world through Kenya<sup>53</sup>. The entire project serves to ultimately link improve e-governance by linking government departments all over the country, and also ensure availability of high bandwidth data connection across Uganda at reasonable rates. The US\$106 million project has, however, been rocked by controversy with accusations of sub-standard work and misuse of funds<sup>54</sup>.

While Internet connections are low as Rønning observes, they are bound to improve as shown by the National Data Transmission Backbone Infrastructure and e-Government Infrastructure (NBI/EGI) project if setbacks such as shoddy works and embezzlement of funds are addressed. It may, therefore, take some time before the benefits of these initiatives are realized. This sub-section shows that economic considerations can limit publishing on news websites in Uganda. Poverty, low Internet penetration and high access costs can hinder access. It may, however, take some time before the benefits of these initiatives are realized. In the same way, online publishers also have to grapple with high maintenance costs of connectivity, as well as less visitors to the sites resulting in less advertising revenue required to sustain the running of the website.

Zeno-Zencovich (2008) is not oblivious to the cultural and economic barriers that hinder development of the Internet. He, however, argues that despite these barriers, the Internet has “...reversed a tendency that appeared well entrenched; without mass communication there is effectively no real expression of ideas, so the issue of freedom of expression is essentially one of mass communications media.” (Zeno-Zencovich, 2008:101).

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<sup>53</sup> See [http://www.ifg.cc/index.php?option=com\\_content&task=view&id=28202](http://www.ifg.cc/index.php?option=com_content&task=view&id=28202), accessed on March 18, 2012.

<sup>54</sup> See <http://www.monitor.co.ug/News/National/-/688334/839468/-/wgt2p2/-/>, accessed on March 19, 2012.

Thus, while the Internet is not well developed in Uganda due to challenges of literacy, access, poverty and high start-up costs, it is a growing media platform worth exploring.

### **2.3.3 Regulation online: a review of the challenges in formulating and enforcing media law on the Internet.**

Zeno-Zencovich observes that the Internet is not as regulated as the print and broadcast media because of its versatility, transnational nature and simplicity of the equipment required to install (Zeno-Zencovich, 2008: 103). He, however, cautions that we should not think that the Internet has no limitations but that identifying what these limits are is not easy and requires investigation (Zeno-Zencovich, 2008: 107). Zeno-Zencovich further emphasizes that the Internet is distinct from the traditional media and cannot be bound by the same rules.

The gist of the argument that Zeno-Zencovich makes is that the Internet is a new medium with distinct features from the print and broadcast platforms. It, therefore, cannot be bound by the same legal framework that applies to the traditional media. The characteristics of the Internet, for example its versatility and transnational nature, thus pose challenges for the design of the legal framework. This does not mean that legal boundaries do not exist to guide activity online. The boundaries are in place but they are not clear-cut. The study will benefit from Zeno-Zencovich's observation of a limited legal framework, as well as what challenges the characteristics on the Internet places in formulating and implementing online media law in Uganda.

Zeno-Zencovich further explains that the transnational character of the Internet poses challenges for individual countries to formulate and enforce legal boundaries unlike the case in the traditional media (Zeno-Zencovich, 2008: 110-111).

The challenge the transnational character of the Internet poses for the legal framework is in the design and implementation of the law. This is because laws are designed in consideration of a country's traditions, experience and values. In the case of publication online, a news website published can be accessed all over the world. However, in case of breach of law, litigants (those offended by a publication) will have a challenge on where to sue a publication. Would that be under the laws of the country in which a publication originates from or another country where the publication was accessed? These are some of the questions that are bound to arise with suits involving news websites.

Another challenge that the transnational nature of the Internet is bound to pose is on the legal limits of national law as opposed to international law. Kierulf explains that in Norway, freedom of mass media is protected through various means, most fundamentally Article 10 of the European Convention of Human Rights (“ECHR”), the case law of the European Court of Human Rights (“ECtHR”), and the Norwegian Constitution Article 100 (“NC 100”) (Kierulf, 2009: 54). These legal instruments are bound to conflict when interpretation of the law is concerned. This is especially the case in situations whereby international law takes precedence over national law (Kierulf, 2009:56).

Kierulf points to the complexity of interpreting the law in a national vis-à-vis international context. This could be said to apply to the Internet since it transcends borders. Zeno-Zencovich on the other hand refers to the challenges in formulating the law to govern Internet activity. The insights provided by Zeno-Zencovich and Kierulf on the challenges of formulating and interpreting media law online are considered in the analysis of the legal boundaries to publishing by news websites in Uganda.

On the other hand, scholars like Rønning (2009) cite an increase of technical surveillance on the Internet, as well as the number of legal provisions being formulated by various countries to deal with the online media.

*“...Even more obvious is that the number of countries applying restrictions on the Net seem to be increasing, and this is not limited to countries that one might usually associate with restricting freedom of expression. Particularly to anti-terrorist laws, morality issues and religious questions filtering on the Net is increasing steadily (Rønning, 2009: 10).*

From Rønning’s observation, it can be argued that while there are challenges of formulating and interpreting legal boundaries online, a trend is emerging in which countries are coming up with more laws and technical means of restricting expression on the Internet. These countries are not necessarily autocratic regimes as would be expected, but include even liberal democracies when it relates to matters such as terrorism, morality and religion.

Furthermore, scholars studying the African media like Berger (2007)<sup>55</sup>, cite the lack of consideration for other media laws by legislators in the design of the Information and Communication Technologies (ICT) laws in Africa. *“ICT laws in Africa are still often being developed in isolation from media laws, and without being guided by the rights and freedoms that are applied to traditional media.”* (Berger, 2007: 14).

Berger points to challenges the design of ICT laws in Africa. He makes the argument that there is need to consider insights from other laws that govern the traditional media in order to protect the rights such as the access to information and free speech. The study will review ICT laws that relate to publication of news online by analysing how there are designed and whether the restrictions they impose are over and above those in the traditional media.

Berger also notes that as some of the legal issues surrounding ICT in African countries are state powers to block and intercept electronic communications, and to control Internet domain-name registration. He also makes reference to other challenges to the development of ICTs in Africa as including universal service and access, information security, the legal liability of service providers and website hosts. The study will benefit from these insights since it will consider claims of attempts to block websites as cited in the case of *Radio Katwe*, review the Regulation of Interception of Communications Act, 2007 passed by the Ugandan Parliament in July 2010 and discuss issues of access.

#### **2.3.4 Media freedom on the Internet: What a study of news publication on the web in Uganda offers.**

A study of media freedom on the Internet offers many opportunities and challenges for scholars. This is because the Internet is a relatively new-medium, especially in developing countries like Uganda in which less than 10% of the population has access to the Internet. Uganda currently has a population of 33 million people<sup>56</sup>. This implies that an estimated

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<sup>55</sup> Berger headed up the School of Journalism and Media Studies at Rhodes University in Grahamstown, South Africa from 1994-2010. Currently, he is the director for Freedom of Expression and Media Development at UNESCO in Paris.

<sup>56</sup> See <http://www.monitor.co.ug/News/National/-/688334/1171010/-/c0xpq3z/-/index.html>, accessed on March 24, 2012.



3.3 million have access to the Internet. Uganda provides an interesting study area because despite challenges such as the high poverty and illiteracy rates, low Internet penetration and high Internet access costs as discussed earlier in the chapter, news websites are up and running. While most websites are run by major media houses such as the Vision Group, Nation Media Group and the tabloid Red Pepper Publications, some individually run websites have developed such as the *Uganda Record* and controversial *Radio Katwe*. This is a sign of the growth of the Internet as a news platform in Uganda, as well as a sign that despite the challenges, efforts are underway to maintain an online news presence.

The study examines expression on the Internet in Uganda. It focuses on the limits- legal, technical, social cultural, economic and editorial- and whether the limits are justified by exploring why the limits are in place. Finally, it strives to show how these restrictions impact on media output online.

#### **2.4 Significance of the study for theory**

The theoretical framework for the study has centered on free expression, press freedom, democracy and the Internet. It has shown the relation between free expression and press freedom, and outlined the legal, economic and cultural boundaries to these freedoms. Furthermore, the chapter has explored free expression on the Internet, by analyzing the advantages the new platform provides, as well as the legal, economic and technical challenges for developing African countries like Uganda. This guided the research process by providing a review of the legal, economic, editorial, and technical restrictions imposed on news websites in publishing their articles. It assesses whether the justifications provided for the restrictions are justified in line with the grounds for protecting free expression. The insights from the discussion guided the interpretation of the data collected through interviews and an analysis of documents.

## **CHAPTER THREE**

### **METHODS AND METHODOLOGY**

#### **3.0 Introduction**

This chapter documents the research process by discussing the methodological approach for the study. It explains and describes the data collection and analysis process that aims at answering the main research questions.

#### **3.1 A case for the qualitative approach to data collection**

The identification of the suitable methodology is an important guide for a researcher on how to answer research questions by way of findings. The study adopted the qualitative research approach because it aims to explore, explain restrictions to online news publishing in Uganda.

According to Sharon Hartin Iorio (2004), qualitative research is interpretative. Qualitative researchers go “into the field” to gather data by observation and interaction with people from whom they hope to learn. They examine extant texts or artifacts in their work, record what they find in writing and videotape. The researchers then analyse and interpret the data to show how the world makes sense to those they study (Iorio, 2004:6).

A qualitative approach also enables a researcher to examine a phenomena in-depth and in detail. Pranee Liamputtong and Douglas Ezzy (2005) state that qualitative research aims to elicit the contextualised nature of experience and action, and attempts to generate analyses that are detailed , ‘thick’, and integrative (Liamputtong and Ezzy, 2005: 2).

The methodological approach for the study was guided by three main research questions. These aim at analyzing the conditions for media freedom on the web in Uganda. The research questions are both exploratory and explanatory. During the study, I examined text, interacted with people, wrote, analysed and interpreted findings from the field. Three qualitative methods were used to collect data; document analysis, in-depth interviews and an analysis of five news websites.

#### **3.2 Data collection methods**

##### **3.2.1 Document analysis**

The study relied on primary and secondary sources of information. Arthur Asa Berger (2002) states that primary research involves firsthand observation and a study by a

researcher, while secondary research uses research performed by others to come to some conclusion about a topic or make some kind of argument. He explains that secondary research is a form of editing in which quotations from this scholar and that scholar are collected to produce an essay or article that makes an argument. Berger also argues that in primary research, we do the actual research; in secondary research, we use the research that others have done (Berger, 2000: 24).

According to Klaus Bruhn Jensen (2002), data in documents are ‘found’ rather than ‘made’ through the researcher’s intervention in the field and as a result, the information is not ‘biased’ by the researcher (Jensen, 2002: 243).

The project relied on primary and secondary sources of information. The data was collected from January 2011 to October 2012.

#### **3.2.1.1 Primary sources**

The study analysed legislation in the 1995 Ugandan Constitution that guarantees and limits media freedom. A review was also done on legislation in the Penal Code Act (1950) relating to sedition, defamation, terrorism and pornography. The laws provided the basis of the analysis on the laws restricting publication of articles by news websites. Other laws that were reviewed included the Regulation of Interception of Communications Act, 2007, Copyright and Neighbouring Rights Act, 2006, and the Computer Misuse Bill, 2008. The laws, therefore, provided the raw material on the media laws in Uganda. In-depth interviews are also primary sources of information. These interviews were conducted with elites who included journalists, editors, lawyers, academics and government officials as has been explained in the section on qualitative interviews.

#### **3.2.1.2 Secondary sources**

Key secondary sources for the study included reports on media freedom. For example, reports by organisations such as the Uganda Bureau of Standards and the United Nations Development Programme were based on to explain the high poverty and inflation rates which impact on the public’s ability to access media products such as newspapers and news websites as discussed in the theoretical framework.

The project also relied on secondary sources such as articles published on news and organizational websites for chapters, including the analysis on the political environment in

Uganda. Websites such as that of the Uganda High Commission and the BBC was relied on tracing the governments from independence to-date. A critique of the democratic reforms by the current government has been done by analyzing international and local news websites such as, AllAfrica.com, Aljazeera.com, Human Rights Watch, Allvoices.com, Afriquejet.com, *Daily Monitor*, the *New Vision*, the *Weekly Observer*, ekimeeza.com, and blogs including *hrnjuganda.blogspot* by Human Rights Network for Journalists in Uganda.

A review was done of the editorial policy of media houses such as *Daily Monitor* in the analysis of the media censorship on socio-cultural issues such as pornography. The study reviewed the section on *obscenity, taste and tone in reporting* in the 2009 editorial policy guidelines and objectives of the media house.

### **3.2.2 Analysis of news websites**

A review was done on five news websites. They are the *New Vision*, *Daily Monitor*, the *Red Pepper*, *Uganda Record* and *Radio Katwe*.

#### **3.2.2.1. The *New Vision* (<http://www.newvision.co.ug>)**

The *New Vision* is selected for the study on the basis of its ownership. The Government has a 53% ownership stake in the *New Vision*, while 47% is split between other institutions and individuals. This implies that the Government is the majority shareholder for the company that is listed on the Uganda Security Exchange.

The website is one of the products of the New Vision Printing and Publishing Company Ltd. The company, which can be argued to be the largest multimedia organization in Uganda, owns four local language newspapers<sup>57</sup>, three magazines<sup>58</sup>, five radio stations and three television stations<sup>59</sup>. While the newspaper started publishing in 1986, the website was launched in 1999.

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<sup>57</sup> <http://www.visiongroup.co.ug/products-newspapers.php>, accessed on Saturday, October 1, 2011.

<sup>58</sup> <http://www.visiongroup.co.ug/products-magazines.php>, accessed on Saturday, October 1, 2011.

<sup>59</sup> <http://www.visiongroup.co.ug/news13.php>, accessed on Saturday, October 1, 2011

The content on the *New Vision* website is similar to that published in the paper edition. The website was chosen for the study because it is argued to be the largest in Uganda with approximately 35,000 hits daily<sup>60</sup>. The study will also seek to explore whether ownership by the government has any influence in what restrictions are imposed on the website in publishing its stories and also explore why the restrictions are imposed.

### **3.2.2.2 Daily Monitor (<http://www.monitor.co.ug>)**

*Daily Monitor* is also selected for the study on the basis of its ownership. It has a majority shareholding of 76.7% by the Nation Media Group, an East African media conglomerate. Five individual shareholders own the remaining shares. The website reflects the content in the print edition but also provides updates throughout the day<sup>61</sup>.

The website is one of the products of the Nation Media Group, an East African conglomerate based in Kenya. It is the largest private news media in Uganda. Besides owning the *Daily Monitor* website and print editions, the firm also the East African, a bi-weekly English newspaper, KFM radio and NTV Uganda TV station<sup>62</sup>. The print edition of *Daily Monitor* started publishing in 1992, while the website was launched in 2001.

*Daily Monitor* is an independent news media. The organisation claims that it is free from the influence of the Government, shareholders or any political allegiance. The website was chosen for the study as a comparison to the *New Vision*. The two news websites publish articles daily and have different ownership patterns. They will also provide a comparison on whether ownership influences what the news websites may publish.

### **3.2.2.3 The Red Pepper (<http://www.redpepper.co.ug>)**

The website is one of the products of the Red Pepper Publications. The organization specializes in tabloid news and it is the largest tabloid media house in Uganda. Besides the

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<sup>60</sup> See <http://www.newvision.co.ug/V/>, accessed on 9<sup>th</sup> May 2011.

<sup>61</sup> See [http://www.monitor.co.ug/meta/about\\_us/-/691198/691168/-/mbeycwz/-/index.html](http://www.monitor.co.ug/meta/about_us/-/691198/691168/-/mbeycwz/-/index.html), accessed on May 9, 2011.

<sup>62</sup> [http://www.nationmedia.com/about\\_us.html](http://www.nationmedia.com/about_us.html), accessed on October 3, 2011

*Red Pepper* website, the company owns two English tabloid newspapers and two local language tabloids<sup>63</sup>. The print edition of the *Red Pepper* started publishing in 2001 while the website was launched in 2011.

The *Red Pepper* specializes in entertainment, news about celebrities, personalities and sex. The website, however, also publishes national and international news which may be political in nature. The news website is chosen for the study because of the nature of its content. Its articles focus on stories about celebrities, scandals, sex and gossip. Including the *Red Pepper* in the study will highlight whether content may determine what kind of restrictions may be imposed on the news website in publishing its stories.

#### **3.2.2.4 The Uganda Record (<http://74.54.226.56/index.php>)**

The *Uganda Record* is an online-only website. This implies that it does not have a paper edition. It is private-owned though its ownership is unknown but thought to be owned by journalist Timothy Kalyegira, who doubles as the editor-in-chief. The news website started publishing in 2009.

The *Uganda Record* is chosen for the study because it representative of an independently-owned website. James Glen Stovall (2004) describes independently-owned news websites as those that do not come from established news organizations but spring from the minds and efforts of individuals or small groups. He adds some of these websites are built to cover subjects and stories that are being ignored by the traditional media (Stovall, 2004: 26). The *Uganda Record* is an online-only edition, which implies that it does not have a paper edition like the *New Vision*, *Daily Monitor* or the *Red Pepper*.

It should be noted that at the start of the research process in 2011, articles on the *Uganda Record* were published regularly. However, from mid-2011, the articles have not been updated. Therefore, the website is used as a special case of independently-owned websites.

#### **3.2.2.5 Radio Katwe (<http://www.radiokatwe.com/news.htm>)**

*Radio Katwe* is an online-only website that publishes articles and intelligence reports that are critical of the Government. The site is sometimes referred to as a blog by some people because of its format. Unlike other news websites with a known owner, the ownership of

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<sup>63</sup> [http://redpepper.co.ug/welcome/?page\\_id=2](http://redpepper.co.ug/welcome/?page_id=2), accessed on Tuesday, October 4, 2011.

*Radio Katwe* is not known. Neither are its editors or contributors. These are kept anonymous. The site deals in news and intelligence reporting. It relies on contributions from the public in the form of articles, opinions and tips.

However, the articles on the site have not been updated. The news on the site was published in 2009, 2008 and 2007. There are no stories published in 2010 and 2011.

The Uganda Communications Commission (UCC) in 2006 ordered MTN, a mobile phone company, to block access to *Radio Katwe*. This had followed a complaint by the ruling National Resistance Movement (NRM) party to UCC claiming that the website was publishing malicious and false information against the party and 2006 presidential candidate Yoweri Museveni<sup>64</sup>. *Radio Katwe* consequently relied on proxy websites as a way of dealing with the blockade. A statement on the website reads, “If you are in Uganda, a quick, easy way to beat the *Radio Katwe.com* blockade is to use any of the hundreds of proxy websites or servers like <http://anonymouse.org> (Click on English, enter <http://www.radiokatwe.com> in the space for the url and logon)”<sup>65</sup>.

*Radio Katwe* is also treated as a special case of independently-owned websites and serves as an example of websites that have in the past been blocked over publication of stories. It is also an online-only website and largely relies on sources and articles from the public. The *Uganda Record* and *Radio Katwe* are both independent news websites that are critical of the current government. The difference between the sites results from the production of news and editorial responsibility. The news published by the *Uganda Record* is by known writers who credit their reports with bylines. The identity of the editor, Timothy Kalyegira, is also known and he takes editorial responsibility. *Radio Katwe*, on the other hand relies on reports sent in by the public. The writers and editors are anonymous. An analysis of the two websites revealed that they were not updated with current news, implying that they could be out of business. This is why I treated them as special cases during the study.

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<sup>64</sup> See <http://www.newvision.co.ug/D/8/13/483221>, accessed on May 10, 2011.

<sup>65</sup> See <http://radiokatwe.brinkster.net/chungasimu030906.htm>, accessed on May 10, 2011.

### **3.2.1 Qualitative in-depth interviews**

According to Berger (2000), interviews are one of the most widely used and most fundamental research techniques. They enable researchers to obtain information that they cannot obtain by observation alone (Berger, 2000:111).

Interviews with elites were used in the study to obtain information on the conditions for media freedom on the Internet in Uganda. They were conducted between June and August 2011. According to Steinar Kvale and Svend Brinkman (2009), elite interviews are with persons who are leaders or experts in a community, who are usually in powerful positions and obtaining access to the interviewees is a key problem when discussing elites (Kvale and Brinkman, 2009:147).

#### **3.2.3.1 Interview sources**

Interviews were conducted with editors, journalists, legal officers, IT specialists and website uploaders at the *New Vision*, *Daily Monitor*, the *Red Pepper* and the *Uganda Record*. Having worked at the *New Vision* for over three years, I established contact both within and outside the media fraternity. Interviews were conducted with the news, online, as well as managing editors at the *New Vision*, *Daily Monitor* and the *Red Pepper*. The editors are considered as elites because they enforce editorial policy in their daily decisions what the media house can or cannot publish. The editors provided information on how what editorial, legal and social considerations they take into account when choosing articles for publication, whether they have been shut down over publication of articles and their views on the shutdown. Their views were also sought on the legal suits brought upon their media houses as a result of articles published on their website, as well as whether and why the content they publish is filtered or monitored.

Journalists are elites because they write stories for publication, they have a wide knowledge about different issues and they have links to several sources of information. One journalist from the *New Vision*, *Daily Monitor* and the *Red Pepper* was interviewed on what editorial, legal and social considerations they take into account while writing articles for publication. Their views were sought on monitoring and filtering of content on their websites, as well as the shutdown of their own or other news websites.

For the *Uganda Record*, the interview was only conducted with Timothy Kalyegira. He was a key source since he is the first online journalist in Uganda to be charged over publication of articles on his website as I have elaborated in the discussion on the law of



sedition and criminal libel in the analysis. The interview explored his views on the case, as well as other legal and social restrictions he faces while publishing articles on his news website. The interview also explored his views on whether his website has been monitored, filtered or shutdown and sought his opinion on this.

Legal officers are elites because they have specialized knowledge about the law. One legal officer from the *New Vision* and *Daily Monitor* was interviewed on the legal suits that that been brought against their news organisation as a result of articles published on the website. The interviews explored the nature of the cases, whether they are ongoing or concluded and what the judgment was in regard to the concluded cases. The interviews provided a detailed legal perspective on the laws related to news websites media and whether they are similar or different to laws that apply to other media platforms. The interviews also explored what the legal officers thought about the relevance of the law and how this promotes or hinders the freedom to publish by the news organizations that they represent.

Information Technology (IT) specialists also have specialized knowledge about the World Wide Web and computers. One IT officer from the *New Vision* and *Daily Monitor* was interviewed on how they ensure that staff members comply with the conditions for access to the Internet and find out whether they filter content on the news websites.

Website uploaders were key elite interview sources because they are responsible for posting articles on the news websites. Interviews were conducted with website uploaders from the *New Vision*, *Daily Monitor*, the *Red Pepper* on what guidelines they adhere to while posting articles on the news websites. They were also interviewed on why they have to follow a set of guidelines and seek their views on how the guidelines affect their job.

The views of media scholars and activists were sought on the legal framework under which news websites operate. The study explored what purpose the laws formulated to guide publication of articles by news websites serve. It also explored whether the differences or similarities in the law that applies to the print, broadcast or Internet platforms. They were also asked about what they think of measures such as filtering or shutting down news websites over the publication of articles.

Sources for the interview were drawn from the Human Rights and Peace Centre at the Faculty of Law, Makerere University. Other sources included multi-media scholars, and

trainers drawn from the African Centre for Media Excellence <sup>66</sup>. This NGO is chosen because it has been at the forefront of advocating for the rights of journalists in Uganda and it also seeks to improve the quality of their reporting. A source from Human Rights Network for Journalists in Uganda (HURJ-Uganda) was interviewed since the organisation has been actively involved in advocating for the rights of journalists in Uganda.

Interviews were also held with government officials from the Uganda Communications Commission, the Media Council and the Uganda Media Centre. These institutions are charged with the responsibility to monitor websites, receive and mediate in complaints brought against media organisations. The officials' views were sought on the content published in the selected news websites, as well as why and how they monitor the content. They were also interviewed on what procedures they follow when dealing with news websites that breach the law or journalistic practice.

The number of sources for an interview depends on the purpose of the study (Kvale and Brinkmann, 2009: 113). The purpose of the study was to establish the overall conditions for media freedom on news websites in Uganda. A total of 23 respondents were interviewed. I felt these were sufficient because they were because they enabled me adequately answer the research questions. The interviewees were drawn from a cross-section of institutions such as the media, Information Technology, academia, legal fraternity and government officials. This provided me with varied viewpoints and minimizes bias whereby only certain viewpoints dominate the research findings.

### **3.2.3.2 The interview preparation process**

An interviewer should be knowledgeable about the topic of concern and master the technical language, as well as be familiar with the social situation and biography of the interviewee (Kvale and Brinkmann, 2009: 147). The documents for analysis will provided me with background information, which I relied on while conducting the interviews.

A lot of preparation is done before the actual interview takes place. A key component of this involves identifying the most suitable sources of information before hand as has been

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<sup>66</sup> A Kampala-based independent non-governmental organization (NGO) that aims at helping African journalists improve their quality of reporting.

explained in the selection of the various sources above. Once the sources have been identified, a researcher should seek their permission and build rapport<sup>67</sup> before the actual interview takes place. Before setting out to conduct the interviews, I introduced myself as a researcher and explained the overall purpose of the project. I then set up appointment dates for the interviews.

Interview guides were prepared before the actual interviews started. According to Monique Hennink, Inge Hutter and Ajay Bailey (2011), an interview guide is a list of questions used by the interviewer mainly as a memory aide during the interview (Hennink et al, 2011: 112). The questions in the interview guide varied depending on the sources being interviewed as has been discussed in the selection of sources. They were designed to ensure that they are in line with the main research questions. The interview guides are attached in appendix ii to ix.

Berger (2000) advises that you should tape-record their interview to ensure that you have accurate information. If this is not possible, you will have to jot down notes as you proceed in the interview (Berger, 2000: 114). Permission was sought from individual interviewees to have the interview recorded before it started. I did not encounter a situation in which interviewees objected to having the interview recorded. I also took notes during the interview, which came in handy for the research process because some of the tapes could not be transcribed.

Key considerations when conducting an interview are the interviewer's subjectivity and positionality. Hennink et al (2011) note that during data collection, how an interviewer portrays themselves (positionality) and their own characteristics (subjectivity) can influence the information collected and the quality of data (Hennink et al, 2011: 122). The interviews were conducted with elites. My introduction to the interviewees varied. For example, in the interviews with the journalists, editors, I noted that I had worked in the media for some time and media freedom is one of my interests given the key role that the media plays in informing the public, providing a platform for debate and the exchange of ideas, as well as checking on the powers that be. In the interviews with media and legal scholars, I explained that I was interested in the study of new media platforms such as the

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<sup>67</sup> To get a better understanding someone.

Internet since it is a growing platform in developing countries like Uganda. Government officials are often suspicious of journalists and many are hostile in their treatment of journalists. In this case, I introduced myself as a Ugandan master's student at the University of Oslo. It also helped me build rapport with government officials when I mentioned that I had worked at the Uganda Media Centre, which is largely considered a public relations arm of the government. I got the impression that my interviewees were receptive and willing to speak to me because I had worked with a government institution and in that case I had a better understanding of government activities.

### **3.2 Challenges encountered in collecting data**

One of the challenges I encountered was establishing contact with editors or reporters at *Radio Katwe*, since they do not have a known physical address. I received no response despite sending an e-mail to the address, *editor@radiokatwe.com*, introducing myself and requesting for an interview opportunity. *Radio Katwe* was, therefore, treated as a special case study for the project. A copy of the email is attached in appendix x.

Some respondents had busy schedules. This implied that getting an interview opportunity at the start of my field work was not easy. I had to reschedule some appointments. A few did not keep time and when I eventually did get the interview opportunity, I had limited time. I dealt with this challenge by trying to get the respondents to answer the main research questions.

I also experienced difficulty in writing during my fieldwork due to load shedding at the time. On several occasions, electricity supply was taken off early in the morning and sometimes returned late in the night<sup>68</sup>. This slowed down my fieldwork since I could not work on my laptop as I had initially planned.

During the transcribing process, parts of some tapes had not recorded. However, I took notes during each interview and I relied on these notes to get the respondents views.

I also experienced a challenge in retrieving previously saved articles from some websites. In some cases, part of the articles for example those originally published by *Daily Monitor*

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<sup>68</sup> See <http://www.monitor.co.ug/News/National/-/688334/1195362/-/byms6wz/-/index.html>, accessed on July 6, 2011.

or the *New Vision* could be accessed through the website, All Africa.com. However, in some cases, only part of the article could be read. I have also experienced a challenge in getting access to the *Uganda Record* website. Initially, I accessed the site through the link, <http://74.54.226.56/index.php>. However, later attempts to access the site were futile.

### **3.4 Data analysis methods**

Qualitative studies aim at carrying out analyses whose elements, procedures and stages are explicit, documented, and can be argued about (Jensen, 2002: 245). However, one of the criticisms of analyzing data obtained using qualitative methods has been the lack of a systematic procedure. Jensen notes that a whole range of approaches and techniques are being applied to qualitative data analysis. He observes that qualitative studies rarely employ standardized logical or mathematical models, but certainly rely on systematic procedures.

Three main methods were used to analyse the data collected. These were an analysis based on the research questions, meaning interpretation, and a theoretical reading.

#### **3.4.1 Analysis based on the three main research questions**

The study was guided by three main research questions. The first research question explored the restrictions imposed on news websites in publishing their articles. The restrictions were categorized as legal, socio-cultural, editorial and technical. The second research question explored why the restrictions are in place. The background section on the political history in Uganda provides the context in which to understand the current legal framework for the media in Uganda. The third question relates to how the restrictions affect publication by media houses. This is examined in the discussions in chapter five.

#### **3.4.2 Meaning interpretation**

In meaning interpretation, the interpreter goes beyond what is directly said to work out structure and relations of meaning not immediately apparent in text. It recontextualises the statements within the broader frames of reference (Kvale and Brinkmann, 2009: 207). There a variety of approaches to the interpretation of meaning. They include multiple interpretations and hermeneutical interpretation. Multiple interpretations refer to the process in which different readings of a text result in different interpretations (Kvale and Brinkmann, 2009: 208). The study focused on the hermeneutical interpretation which

refers to the continuous back-and-forth process between parts and the whole. It starts with and often vague and intuitive understanding of the text as a whole, its different parts are interpreted, and out of these interpretations the parts are again related to the totality (Kvale and Brinkmann, 2009: 210). Hermeneutical interpretation was used in the analysis of the laws that restrict publication of articles on news websites. It enabled me to understand and contextualize the law by focusing on why it was formulated and what purpose it serves.

### **3.4.3 Theoretical analysis**

This method of analysis involves the reliance of theories to explain the data collected in the field work. Kvale and Brinkmann (2009) assert that a theoretical reading of texts can draw in new contexts for regarding the interview themes, and bring forth new dimensions of familiar phenomena (Kvale and Brinkmann, 2009: 238).

A theoretical reading was used to interpret text obtained from the interviews and documents collected. Free press and legal theories were developed before and after the fieldwork began.

The theoretical analysis relied on the concepts including free expression, individual liberty, tolerance, democracy and new media to guide the understanding of the objective of the research project. Theoretical perspectives began at the start of the data collection and were relied upon throughout the entire collection process. Kvale and Brinkmann argue that if theoretical perspectives are not considered until the analysis stage, the interviews may lack the relevant information for making specific interpretations on the basis of theory (Kvale and Brinkmann, 2009: 239).

The scholars note that a theoretical reading of texts may also imply biased interpretations with the readers only noticing those aspects of the phenomena that can be seen through their theoretical lenses. (Kvale and Brinkmann, 2009: 238). They propose careful listening and the importance of the interviewer being open and sensitive to many nuances of what the interview subjects are telling them (Kvale and Brinkmann, 2009: 239). I relied on this advice in collecting data by paying attention and being open to the various viewpoints presented in the study as has been discussed in the analysis.

### **3.5 Validity, reliability and generalisability**

Certain criteria taken into mind when judging the quality of a research project. According to Robert K. Yin (2009), because a research design is supposed to represent a logical set of statements, you can judge the quality of any given design according to certain tests. He makes reference to the US Government Accountability Office in 1990 while formulating these criteria. Yin states that the concepts offered for these steps include trustworthiness, credibility, confirmability, and data dependency (Yin, 2009: 40).

Kimberly A. Neuendorf (2002) describes reliability as the extent to which a measuring procedure yields the same results over repeated trials (Neuendorf, 2002: 112). Jensen (2002) asserts that reliability addresses the consistency of descriptions and interpretations over time, typically in the form of repeated measurements (Jensen, 2002: 267).

In qualitative research, reliability can be achieved by documenting every procedure and making every step as operational as possible. This implies clearly explaining the research process. This involves the formulation of clear and research questions and their sub-components, providing an interview guide, and stating clearly what methods will be used to collect and interpret the data. It may be argued that in qualitative research no two people following the same procedure can arrive at the very same conclusion, especially when it comes to interpreting data, which is subjective.

Yin advises researchers to document the procedure by making as many steps as operational as possible and to conduct research as if someone were always looking over your shoulder (Yin, 2005: 45). I strived to document the research process by first coming up with three main question and their sub-components as discussed in the Introduction chapter. From these questions, interview guides were prepared and they are attached in the appendices. I have also provided a list of interviewees, and attached documents such as the e-mail I sent out to editors at *Radio Katwe*. Efforts have also been made to provide clear methods of data collection and analysis. Furthermore, each chapter has introduction outlining what it aims at achieving and its overall purpose for the study.

Neuendorf describes validity as the extent to which a measuring procedure represents the intended, and the only intended, concept (Neuendorf, 2002: 112). She notes that when researchers think about validity, they ask the question, “Are we measuring what we want to measure?” There are two types of validity, internal and external validity. According to

Jensen (2002), internal validity evaluates the consistency of concepts and procedures that are applied to the empirical context (Jensen, 2002: 267). The study strived to ensure that the interview questions for the respondents were in line with the overall research questions and objective of the project. A cross-section of respondents from the media, academia, legal fraternity, as well as government departments were interviewed. They provided a variety of viewpoints which enabled me to analyse the research questions.

Jensen states that external validity involves assessment of whether the finding of a study may be generalized to other situations or populations (Jensen, 2002: 267). External validity also refers to the generalisability of a study. Yin asserts that in qualitative research, a study's findings may be generalisable to theory. He calls this process analytical generalization. He states that in analytical generalization, the investigator is striving to generalize as particular set of results to some broader theory (Yin, 2009: 43). Yin, however, cautions that generalization is not automatic and that a theory must be tested by replicating the findings where the theory has specified the same results should occur. He argues that once such direct replications have been made, the results might be accepted as providing strong support for the theory, even though further replications had not been performed (Yin, 2009: 44).

The analytical generalization was relied on to make generalizations in the study. This was reinforced by the use of theoretical readings in analyzing the data collected in the research process. Conclusions were, therefore, made based on the findings. Furthermore, five websites were analysed. They were selected on the basis of their ownership and content. The study strived to include the various types of news websites on which I may argue that generalizations and conclusions can be made about publication of articles on news websites in Uganda.



## **CHAPTER FOUR**

### **EXAMINING HOW LEGISLATION SETS UP RESTRICTIONS TO PUBLISHING BY NEWS WEBSITES IN UGANDA**

#### **4.0 Introduction**

This chapter provides a discussion to the first research question that aims at establishing the legal restrictions to publishing by news websites in Uganda. It reviews the current legal framework for the media in Uganda and examines the laws that restrict publishing on news websites. It also assesses the justifications or reasons for the laws, thereby discussing the second research question. The chapter provides the background for the analysis of the legislation because it describes and assesses why the laws are in place.

#### **4.1 An overview of media legislation in Uganda**

This sub-section provides an overview of the legislation that governs the media generally in Uganda. A brief discussion is done on the Constitution, which is the supreme law of the land, in regard to provisions relating the media freedom. Other key statutes that are discussed include the Press and Journalists Act 1995 for the print media, the Electronic Media Act for the broadcast media and the Uganda Communications Act that partly administers the online media.

##### **4.1.1 The Constitution**

Freedom of the press in Uganda is protected in the 1995 Constitution. Article 29(1) (a) states, *“Every person shall have the right to-freedom of speech and expression which shall include freedom of the press and other media;”*

This article stipulates that the media - print, broadcast or the Internet - is guaranteed the freedom to publish or broadcast. However, this freedom is not absolute. The very Constitution that guarantees liberty on one hand sets conditions for the enjoyment of this freedom. For example, Article 41 (1) of the Uganda Constitution limits access of information on the grounds of protecting national security and the right to privacy. The provision reads,

*“Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is*

*likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person”.*

Furthermore, the second part of the provision, Article 41(2) of the Constitution, reads, *“Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access of information”.*

The media’s freedom to publish is, therefore, limited by constitutional provisions relating to issues such as terrorism and national security as discussed in sections 2.2.2.1 and 4.2.

#### **4.1.2 The Press and Journalists Act 1995**

The Press and Journalists Act 1995 was established to ensure freedom of the press, to provide for a council responsible for the regulation of the mass media and to establish an institute of journalists of Uganda. The law provides for the right to publish a newspaper and access to official information relating to matters of national security, secrecy or confidentiality of information. It further requires the compliance with other laws, especially those on pornographic matters and obscene material. The law also requires the registration of the particulars of an editor, prescribes the functions of an editor and grounds under which the editor may be disqualified.

The Act established a Media Council, which is responsible for the regulation and promotion of good ethical standards and discipline of journalists. This task involves arbitrating in disputes between the public and the media, as well the State and the media. The Council is also tasked with exercising disciplinary control over journalists, editors and publishers. It is authorized to censor films, videotapes, plays and other related apparatuses for public consumption among other functions. Despite the existence of the Council, which has an arbitrary role, there have been cases when the government has dragged media practitioners and institutions to court over unprofessional conduct.

Furthermore, the law established the National Institute of Journalists of Uganda (NIJU). The institute is tasked with establishing and maintaining professional standards for journalists, to foster professional fellowship among journalists, to encourage, train, and equip journalists, and to establish and maintain a mutual relationship with international journalist organizations.

The Government has proposed the amendment of the Press and Journalists Act, 2001 so as to regulate the print media. An article *by The New Vision* quotes the then Minister of

Information and National Guidance, Kabakumba Masiko, as saying that the move is aimed at improving the standards of reporting, and the quality and professionalism of the journalists<sup>69</sup>.

However, Dr. George Lugalambi, former head of the Journalism and Communication department at Makerere University in Kampala, noted that the proposed Press and Journalist Bill 2010 will further erode press freedom and free expression in Uganda.

On the proposal requiring newspapers to be licensed annually, Lugalambi stated that a special annual license will only add to their cost of doing business. He expressed concern over what he referred to as the spirit behind this amendment, and states that the Government wants to gain the power to deny, revoke or refuse to renew newspaper licenses at will and without prior recourse to the courts of law<sup>70</sup>.

President Yoweri Museveni established the Uganda Media Centre in September 2005 with the aim of introducing professional management of government media relations. The institution exists and operates outside ordinary public service structures<sup>71</sup>. Thus unlike the Media Council, the Media Centre is not established by a statute of law and its legal existence has been questioned by media critics and members of the opposition. The Centre has been viewed as a public relations arm of the ruling National Resistance Movement (NRM), which has the largest representation in Parliament.

Among other functions, the Media Centre accredits foreign journalists<sup>72</sup>. In 2006, the government was accused of refusing to renew the work permit of Canadian journalist Blake Lambert after it expired. According to an article by Human Rights Watch of March 13, 2006, the government is quoted to have said Lambert posed a security threat, but did not explain how or cite any of his articles as posing a danger. Lambert told Human Rights Watch that he never received an explanation about the refusal to renew his accreditation or his visa<sup>73</sup>.

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<sup>69</sup> See <http://allafrica.com/stories/200912080153.html>, accessed on 26<sup>th</sup> February, 2011.

<sup>70</sup> See <http://www.newvision.co.ug/PA/8/459/713867>, accessed on 26<sup>th</sup> February, 2011.

<sup>71</sup> See <http://www.mediacentre.go.ug/details.php?catId=10>, accessed on February 20, 2011.

<sup>72</sup> See <http://www.mediacouncil.ug/accreditation.php>, accessed on July 20, 2012.

<sup>73</sup> See <http://www.hrw.org/en/news/2006/03/12/uganda-new-government-threatens-free-press>, accessed on March 1, 2011.

#### **4.1.3 The Electronic Media Act**

The Electronic Media Act provides for the setting up of a Broadcasting Council to license and regulate radio and television stations, to provide for the licensing of television sets and to amend and consolidate for the law relating to electronic media. It specifically prescribes the requirements for the registration and licensing and of radio and television stations. It also states the functions of a proprietor or producer of a broadcasting station and conditions that would lead to the disqualification of a producer.

The Broadcasting Council is mandated to coordinate and exercise control over broadcasting activities. It is specifically responsible for the standardisation, planning and management of the frequency spectrum and to allocate those spectrum resources in such manner as to ensure the widest possible variety of programming and optimal utilisation of those spectrum resources. The Council is also required to coordinate communication on electronics media with the relevant national and international organizations, set ethical broadcasting standards and to arbitrate, in consultation with the Media Council, on disputes between operators of broadcasting stations; and the public and operators of broadcasting stations. The Broadcasting Council is also responsible for advising the government on broadcasting policy. The Act may be criticised for setting up institutions with duplicate roles. Why should the Broadcasting Council and Media Council both arbitrate in disputes relating to breach of ethical or professional standards? And is it justifiable for a largely state set-up media institution to mediate in a case in which the state drags media practitioners and institutions to court? Analysts have proposed the establishment of an independent mediatory body to mediate in such disputes and to ensure professional standards is upheld by the media.

#### **4.1.4 Uganda Communications Act**

The Uganda Communications Act provides for the restructuring of the communications industry in Uganda by establishing the Uganda Communications Commission (UCC). It also provides for the Commission's functions and administration, the incorporation of Uganda Telecom Limited and Uganda Post Limited and to liberalise and introduce competition in the industry. The Uganda Communications Commission is mandated to

monitor, inspect, license and regulate communications services. It is also assigned to allocate and license the use of radio frequency spectrum and to process applications for the allocation of satellite orbital locations.

The Commission is required to make recommendations to the Minister on the issuance of licenses, supervise and enforce the conditions of the licences, establish a tariff system to protect consumers from excessive tariff increase and avoid unfair tariff competition. It also assigned to or authorise any person to conduct under supervision, technical evaluation relating to communications services and set national communications standards. The Commission is also mandated to receive and investigate complaints relating to communications services and to take necessary action upon them. The Internet can, therefore, be argued to fall under the jurisdiction of UCC.

According to the website of the Ministry of Information and Communications Technology, the Ugandan Parliament on October 7, 2010 passed two Cyber Bills - the Electronic Signature Bill and the Electronic Transactions Bill<sup>74</sup>. The Computer Misuse Bill, 2008 was passed on August 4, 2010. The Electronic Signatures Bill will regulate the use of electronic signatures, while the Electronic Transactions Bill will provide for the use, security, facilitation and regulation of electronic communications and transactions and encourage the use of e-Government services. The Computer Misuse Bill on the other hand will provide for the safety and security of electronic transactions and information systems. The Computer Misuse Bill was considered the most relevant for the study on online news publishing. A detailed discussion on this Bill is done in sections 4.6 and 5.1.6.

Nevertheless, the other electronic laws referred to above show that while efforts are in place by the Government to establish laws aimed at protecting e-commerce, there are hardly any laws that provide for the protection of e-communication. Thus, the Internet can be argued not to enjoy protection in regard to freedom of expression nor be bound by the restrictions that apply to the traditional print and broadcast media as argued by scholars like Lipschultz (2008:8). The next section reviews the laws that restrict or are likely to restrict publishing by news websites in Uganda.

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<sup>74</sup> See [http://www.ict.go.ug/index.php?option=com\\_content&view=article&id=128:cyber-bills-passed&catid=35:ict-news&Itemid=74](http://www.ict.go.ug/index.php?option=com_content&view=article&id=128:cyber-bills-passed&catid=35:ict-news&Itemid=74), accessed on March 1, 2011.

## 4.2 Terrorism

Article 26 of the Penal Code Act relates to terrorism. It defines terrorism as “the use of violence or a threat of the use of violence with intent to promote or achieve political ends in an unlawful manner and includes the use of violence or a threat of the use of violence calculated to put the public in such fear as may cause discontent against the government”.

Parliament passed the Anti-Terrorism Act in 2002. The Act makes terrorism, and supporting or promoting terrorism crimes punishable by capital punishment.

Uganda experienced years of civil unrest that spanned from the period after independence in 1962 to 1985. This was a time of military coups and takeovers. Even when relative stability returned to the country after the NRM government came into power in 1986, parts of the country, especially the north and west, were still unstable. This was due to confrontation between the government forces and rebel groups namely the LRA in the north and the Allied Democratic Forces (ADF) in the west. These rebel groups, with the addition of al-Qaeda, have been classified as terrorist groups. It can also be said that the same classification goes for the al-Shaabab based in Somalia, which the United States views as a proxy of al-Qaeda. While it can be argued that the north and western Uganda are relatively calm after the rebel groups were kicked out of the country, the provisions on treason posed a challenge to journalists who covered the conflict.

## 4.3 Defamation

Chapter 17 of the Penal Code relates to defamation. The provision defines defamatory matter as that which is,

*“likely to injure the reputation of any person by exposing that person to hatred, contempt or ridicule, or likely to damage any person in his or her profession or trade by an injury to his or her reputation.”*

For a publication to be defamatory, the law stipulates that the matter is true and it was for the public benefit that it should be published or it is privileged. The clause further prescribes the conditions under which publication of defamatory matter is privileged. The charge of defamation has been largely used by public figures and celebrities against media houses.

The *New Vision*, *Daily Monitor* and the *Red Pepper* are also regularly dragged to court over defamation as has been discussed in the next chapter. The burden of proof in cases of defamation is on the defamed person, otherwise referred to as the plaintiff, and proving this has often been a challenge to parties who claim to have been defamed. Sometimes the cases are settled out of court but nevertheless the law of defamation has been costly to media houses in terms of the fines awarded, time spent attending court sessions and also in terms of the cost to their credibility.

#### **4.4 Sedition and criminal libel**

Sections 39 and 40 of the Penal Code provide for the existence of sedition, while Section 42, 43 and 44 relate to sedition. This law was, however, outlawed by the Constitutional Court in August 2010 after a petition by the East African Media Institute and renowned journalist Andrew Mwenda. The petitioners had argued that the Penal Code provisions on sedition, sectarianism and criminal defamation contravene Article 29 of the Constitution of Uganda which guarantees freedom of expression and freedom of the press<sup>75</sup>. A panel of five judges of the Constitutional Court on August 25, 2010 made the declaration that, “*Sections 39 and 40 of the Penal Code are 20 inconsistent with provisions of the Articles 29(1) (a) and 43(2) (c) of the Constitution and are null and void. They are struck out of the Penal Code*”.

Despite being struck from the Penal Code, the law of sedition is important for the study because it was the first time an online journalist in Uganda was charged under the law. The case involved the editor of the *Uganda Record*, an online only news website. Timothy Kalyegira had written articles titled, “*Who set off the Uganda bombs?*” published on July 12, 2010 and, “*Why is Rwanda not condemning Al-Shabab?*” published on July 16, 2010 in the *Uganda Record* in which he questioned whether the July 11, 2011 bomb attacks that killed over 70 people in Kampala were really carried out by the Somalia-based al-Shabaab terrorists or the Ugandan government<sup>76</sup>.

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<sup>75</sup> See <http://www.acme-ug.org/news/item/32-uganda-court-quashes-law-on-sedition>, accessed on December 5, 2011.

<sup>76</sup> See <http://www.blackstarnews.com/news/135/ARTICLE/6729/2010-08-04.html>, accessed on December 6, 2011.

Kalyegira was, however, arrested on August 3, 2010<sup>77</sup> before the Constitutional Court ruling that outlawed the law of sedition on August 25, 2010. Consequently, fresh charges of criminal libel were preferred against Kalyegira on May 31, 2011 at the Kampala Magistrates Court over the articles he published linking the Ugandan government to the July 11, 2010 bomb blasts in Kampala. The charge sheet stated that he allegedly unlawfully published a defamatory story in the *Uganda Record* with intention of defaming President Yoweri Museveni<sup>78</sup>.

The charge of criminal libel is contained in Section 179 of the Penal Code Act that relates to defamation. The section states,

*“Any person who, by print, writing, painting, effigy or by any means otherwise than solely by gestures, spoken words or other sounds, unlawfully publishes any defamatory matter concerning another person, with intent to defame that other person, commits the misdemeanour termed libel.”*

For lawful publication on defamatory statements, the law requires proof that the statement is true, it is for the public benefit, that it should have absolute or conditional privilege or has the conditional privilege that it was made in good faith. These are explored in the interviews with legal officers and editors in section 5.1.2.

#### **4.5 Regulation of Interception of Communications Act, 2007**

The Regulation of Interception of Communications Bill was passed by Parliament on July 14, 2010 and came to force on September 3, 2010. The Act provides for,

*“the lawful interception and monitoring of certain communications in the course of their transmission through a telecommunication, postal or any other related service or system in Uganda; to provide for the establishment of a monitoring centre; and to provide for any other related matters.”*

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<sup>77</sup> See <http://allafrica.com/stories/201008040109.html>, accessed on December 4, 2011.

<sup>78</sup> See <http://www.monitor.co.ug/News/National/-/688334/1172874/-/c0wtytz/-/index.html>, accessed on December 7, 2011.



Furthermore, the Act authorises the “minister responsible for security or any other minister to whom the President may from time to time assign the administration of the Act”. As a result, the Act, also informally referred to as the phone-tapping Bill, been criticised for giving powers to security officials to “listen into private communication if they have sufficient reason to suspect the communication is in aid of criminal activity.” The Internet falls under the classes of information that may be intercepted under this law.

#### **4.6 Copyright and Neighbouring Rights Act, 2006**

The Copyright and Neighbouring Rights Act was assented into law on May 31, 2006 and came into effect on August 4, 2006. It is an “Act to repeal and replace the Copyright Act, and to provide for the protection of literary, scientific and artistic intellectual works and their neighbouring rights; and to provide for other related matters.”

The Act spells out literary, scientific and artistic works protected but it does not protect ideas, concepts, procedures, methods or other things of a similar nature. Works described for the public benefit are also not protected under the Act. The Act also provides for fair-use of copyright work in cases when the work is for personal and private use, a quotation from a published work is used in another work or published work is used for teaching purpose to the extent justified for the purpose by way of illustration in a publication, broadcast or sound or visual recording.

Section 47 of the Act provides for offences and penalties. According to sub-section one, those in breach of published work are “liable on conviction, to a fine not exceeding one hundred currency points or imprisonment not exceeding four years or both”. The Act states that one currency point is equivalent to twenty thousand Uganda shillings. This implies that 100 currency points is equivalent to 2,000,000 Uganda shillings (about \$770; Bank of Uganda rate on November 12, 2012).

#### **4.7 The Computer Misuse Bill, 2008 vis-à-vis the Budapest Convention on Cybercrime**

Parliament passed the Computer Misuse Bill, 2008 on August 4, 2010. The President has not accented to the Bill and it is not operationalised. The Bill is designed to,

*“make provision for the safety and security of electronic transactions and information systems; to prevent unlawful access, abuse or misuse of information systems, including computers, and to make provision for securing the conduct of electronic transactions in a trustworthy electronic environment and to provide for other related matters.”*

The Bill criminalises computer misuse. This is defined as including unlawfully accessing computers and network systems, corrupting data, disrupting networks or systems, introducing viruses, creating and forwarding defamatory material, and copyright infringement. Notable in the Bill is Section 20 which relates to child pornography. Subsection (2) states that child pornography includes,

*“pornographic material that visually depicts (a) a child engaged in sexually suggestive and explicit conduct; (b) a person appearing to be a child engaged in sexually suggestive and explicit conduct; or (c) realistic images representing children engaged in sexually suggestive and explicit conduct.”*

A person who commits an offence relating to child pornography is liable on conviction to a fine not exceeding one hundred and twenty currency points (about Uganda shillings 2,400,000 or \$932; Bank of Uganda rate on November 12, 2012) or imprisonment not exceeding five years or both.

Legislation against child pornography is not unique to Uganda. Scholars like Mark D. Alleyne observe that, *“many countries restrict publication of information deemed pornographic and offensive to “public morality”* (Alleyne, 1997: 102). An example is the Norwegian Penal Code that prohibits child pornography on grounds that it is harmful to them. The legislation is usually aimed at protecting children and seen as a legitimate and justifiable restriction on freedom of expression.

The Budapest Convention on Cybercrime also has implications for the misuse of computers. The Convention aims at criminalising conduct of cybercrimes, including attacks against computer systems such as hacking. It also seeks to ask countries that ratify it to criminalise attacks using computers and promote international cooperation on cybercrime.

Alexander Sege, the head of the Council of Europe's new cyber-crimes division, is quoted to have called on African states to ratify the Budapest Convention on Cybercrime. Sege is reported to have made this call while in Nairobi, Kenya, for the sixth Internet Governance Forum in October 2011 where he is quoted to have remarked, "*African countries on the path to implementing the treaty will have much better opportunities to receive support from the private sector*".

No African country is reported to have ratified the treaty, though South Africa has signed it, while Senegal has already received its invitation to accede the convention. The implications and possible reasons for this are examined in the next chapter.

#### **4.8 Anti-homosexuality Bill**

David Bahati, a Ugandan Member of Parliament (MP) tabled the Anti-Homosexuality Bill in October 2009. The Bill seeks among others to imprison for life anyone convicted of "the offence of homosexuality," punish "aggravated homosexuality" and offences like having gay sex while HIV-positive by a death penalty upon conviction. The Bill also forbids any "promotion of homosexuality" and incarcerates gay-rights defenders<sup>79</sup>.

The Bill received backing from religious and anti-gay activists in Uganda who also petitioned Parliament in April 2011 calling for its passing. The petition that is reported to have been signed by two million people countrywide was presented to the then Speaker of Parliament, Edward Ssekandi, by the activists led by Pastor Martin Ssempe. Ssempe is reported to have stated that, "*We are not here to hang the gays as people have speculated but to protect young men and girls being recruited into the practice.*" The petitioners are also reported to have listed 19 organisations which they claimed are promoting homosexuality in the country<sup>80</sup>.

The Bill, however, attracted criticism from Western leaders. The White House is reported to have issued a statement condemning the Bill. It stated that President Barack Obama,

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<sup>79</sup> See <http://www.monitor.co.ug/News/National/-/688334/1140310/-/c2sydtz/-/index.html>, accessed on December 16, 2011.

<sup>80</sup> See <http://www.monitor.co.ug/News/National/-/688334/1140310/-/c2sydtz/-/index.html>, accessed on December 16, 2011.

*“strongly opposes efforts, such as the draft law pending in Uganda, that would criminalise homosexuality and move against the tide of history”*. The Canadian and British governments are also reported to have criticised the proposed law, while Sweden threatened to cut assistance to Uganda<sup>81</sup>.

The Ugandan Cabinet in August 2011 dropped the Anti-Homosexuality Bill on the advice of Adolf Mwesige, the ruling National Resistance Movement (NRM) party lawyer. The decision drop the Bill is reported to have been made at a Cabinet meeting where Mwesige, according to sources, told ministers that the Bill was unnecessary since the Government has a number of laws in place criminalising homosexual activities. The sources also added that the ‘Bill was dropped because it was overtaken by events, and that donor and other sections of the public were not comfortable’<sup>82</sup>. Bahati, however, insists that the Cabinet has no mandate to drop the Bill. He is quoted to have said, *“The future of this country’s children will be determined by the peoples’ representatives in Parliament.”*

The Bill is controversial because it illustrates the difficulty in upholding morals in the Ugandan context on the one hand and allowing for the rights of minorities like gays advanced by several Western countries. The controversy is illustrated in the treatment of the law by legislators and the Cabinet. Section 5.3.1 analyses the editorial challenges the anti-homosexuality Bill presents for media houses in publishing their articles. In my view, the Cabinet decision to drop the Bill, in disregard of the legislators’ views also points to the interference of the Executive in legislative matters as was reviews in section 1.4.6.

#### **4.9 Anti-pornography law**

The publication of pornographic material in Uganda is restricted by the anti-pornography law. The government has proposed stiffer legislation in regard to pornography by amending the existing law. A *New Vision* article of September 8, 2010 quotes former ethics and integrity minister Dr. James Nsaba Buturo as saying the current law on pornography

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<sup>81</sup> See <http://www.monitor.co.ug/News/National/-/688334/823640/-/view/printVersion/-/eopmfb/-/index.html>, December 17, 2011.

<sup>82</sup> See <http://www.monitor.co.ug/News/National/-/688334/1223104/-/bjwa2vz/-/>, accessed on December 17, 2011.

was too narrow and weak to stop the proliferation of different forms of pornography. The government proposed an expansion of the law beyond obscene publications to include obscene broadcasting, stage plays, music, art, fashion, motion pictures and audio recording<sup>83</sup>.

The proposed Bill defines pornography as “*any form of communication from literature to fashion or photography that depicts unclothed or under-clothed parts of the human body (such as breasts, thighs, buttocks or genitalia), that narrates or depicts sexual intercourse or that describes or exhibits anything that can lead to erotic stimulation*”<sup>84</sup>.

Buturo, is also quoted to have linked pornography to homosexuality. “*Pornography breeds homosexuality. I am happy that finally a Bill to curb pornography in Uganda is out to punish the promoters of the vice. The draft bill is already in Cabinet for discussion*”<sup>85</sup>.

The penalty for a person found guilty of dealing in pornographic material is heavy fines or a 10-year jail sentence or both. Buturo is reported to have warned that Internet owners on the other hand risk five years imprisonment if found guilty.

“*The days of the homosexuals are over. The Bill is good news to all morally upright Ugandans saying that pornography has contributed to moral decay and increased crimes among Ugandans*”<sup>86</sup>. This implies that pornography is not only illegal by law but it is also considered a vice, immoral or a practice that is not acceptable in Uganda as has been discussed in section 5.3.3.

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<sup>83</sup> See <http://www.newvision.co.ug/D/8/13/731377>, accessed on February 28, 2011.

<sup>84</sup> See <http://www.monitor.co.ug/News/National/-/688334/1006690/-/co8m8cz/-/index.html>, accessed on February 28, 2011.

<sup>85</sup> See <http://www.afrik-news.com/article18213.html>, accessed on December 17, 2011.

<sup>86</sup> See <http://www.afrik-news.com/article18213.html>, accessed on December 17, 2011.

## **CHAPTER FIVE**

### **DISCUSSION ON THE LEGAL, SOCIAL, EDITORIAL AND TECHNICAL RESTRICTIONS AND THEIR IMPACT ON PUBLISHING BY NEWS WEBSITES IN UGANDA**

#### **5.0 Introduction**

This chapter provides a discussion to the first research question on the laws introduced in the previous chapter. It reviews editorial, social-cultural and technical restrictions to publishing by news websites. The chapter also analyses the third research question that explores how the restrictions impact on media output. A theoretical reading was relied upon to interpret and analyse the findings obtained through interviews and an analysis of documents.

#### **5.1 Legal framework; an examination of media laws and their impact on publishing by news websites.**

The study explored the how the legal framework impacts on articles published by news websites in Uganda. It focused on the media laws that affect publishing and highlighted cases in which journalists and media houses have been sued over publication of articles on their websites.

Most respondents interviewed acknowledged the existence of media laws which they felt were designed for the print and broadcast media but they observed that there were hardly any laws that guide publication on the Internet.

In an interview on July 20, 2011, Rita Kabatunzi, the legal officer at the *New Vision*, was of the view that the media is not highly regulated. She observed that while the print media is regulated by the Press and Journalists Act and the Electronic Media Act regulates the broadcast media, no media laws have been designed to regulate online news publishing. Kabatunzi attributes the lack of a clear legal media framework in Uganda to the reliance on Common Law in Britain.

*“Uganda still fashions a lot after the Common Law<sup>87</sup> in Britain or the UK as it is now. And so because of that, the Common Law that is applicable to us under our laws is what we use. So for example, for defamation, we will use the general principles of Defamation Common Law because we don’t have an Act. But the rules of defamation apply to the website. So like for New Vision, we have people sometimes writing in saying you have defamed us through use of your website.”*

The implication for the lack of a specific law for publication on news websites is that the laws that govern publication in the print and broadcast media are applied to news websites in Uganda. This is the view shared by John Kakande, the *New Vision* editor,

*“We assume that the laws governing the print and electronic (media) automatically apply online. But Ugandan laws have not been updated specifically do deal with online.”*

Kakande explains that while media practitioners are conscious of the legal implications of articles published on news websites, they, however, think that it is not a problem area. This implies that they do not view the Internet as a platform with serious legal challenges.

Arinaitwe Rugyendo, the managing editor at the *Red Pepper*, concurs with Kakande. *“News websites being a new recent innovation are not properly catered for except as operating just like any other medium,”* Rugyendo explains.

Peter Mwesige, the executive director of the African Centre for Media Excellence (ACME), shares a similar view on the lack of regulation of the Internet in Uganda. *“We have not had any serious legal framework that addresses online communication. I am sure they are going to, but I think right now we are fairly free.”*

The respondents concur on the lack of specific regulation for news websites in Uganda. This is mainly due to the versatility and transnational nature of the Internet (Zeno-Zencovich, 2008:103). The lack of regulation can be advantageous since it may be argued that news websites are free to publish, as well as provide a platform for debate and exchange of ideas. This in the long run helps further the individual freedom of expression (Zeno-Zencovich, 2008:100) and also contributes to the democratization process (Rønning,

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<sup>87</sup> Common law is a legal situation whereby cases are judged basing on other cases.

2009: 10). In my view, the downside to the lack of regulation of news websites is that it creates uncertainty among media practitioners in Uganda on what their freedom and boundaries are given that they rely on laws applicable to the print and broadcast media yet the Internet is a different medium, with “its own logic and semantics distinct from the press, TV, and radio as argued by Zeno-Zencovich (2008: 107).

This argument on the distinct nature of the Internet is explored in the discussion of the legal suit involving Timothy Kalyegira, the online editor of the *Uganda Record*. Nevertheless, the lack of regulation does not imply that boundaries do not exist online. Identifying these limits is no easy task (Zeno-Zencovich, 2008: 107) but it can be agreed that a trend exists where the restrictions on the Internet appear to be increasing (Ronning: 2009: 10). This will also be highlighted in the discussion on cases in which online editors, as well as news websites have been sued over the publication of articles. Therefore, the lack of regulation can be said to simultaneously promote and limit the freedom of expression, as well as media freedom in Uganda. The next section reviews other laws that restrict or are likely to restrict publishing by news websites in Uganda.

### **5.1.1 Assessing legislation on terrorism**

According to a publication by Human Rights Watch<sup>88</sup> of April 8, 2009, the Anti-Terrorism Act, “does not precisely define “influencing the government”, and “intimidating the public or a section of the public,” potentially implicating those who hold opposing views from the government. Journalists in particular could be prosecuted for reporting on the activities of rebels during a war.”<sup>89</sup> The organization adds that the Act subjects political activities to criminal sanctions, even when there has been no criminal activity and that there is no indication of the level of damage that would render an act a crime of terrorism. The laws against terror in Uganda are an addition of the legal provisions that have been criticized by media practitioners for stifling media freedom.

In my view, the implication of the lack of clarity of this law is that the media are at crossroads in regard to what articles to publish. It can also be argued that the state or

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<sup>88</sup> Human Rights watch is an independent organization dedicated to defending and protecting human rights.

<sup>89</sup> See <http://www.hrw.org/en/node/82072/section/14>, accessed on March 2, 2011.



government may use this provision to limit the media's freedom in investigating matters of terrorism and related laws like national security. An example is the case in which the government sued *The Monitor*<sup>90</sup> citing breach of national security for an article of 10<sup>th</sup> October, 2002 which claimed that a UPDF chopper had crashed in battle with the LRA rebels in northern Uganda. This example is important for the study because the newspaper won the case in 2004 after court established that there was no evidence that the article would prejudice national security<sup>91</sup>.

I conducted a pilot study of the *New Vision*, *Daily Monitor* and the *Red Pepper* from September 26 to October 2, 2011. During this period, coverage by the websites on terrorism focused on individuals charged with terrorism or statements on terrorism by government officials. In September, the trial of suspects charged with terrorism in connection to the July 11, 2010 bomb blasts that killed over 70 people in Kampala started. This was covered by *Daily Monitor*, the *New Vision* and the *Red Pepper*. The reporting, therefore, was centered on the trial. Two of the suspects received coverage when they plead guilty as reflected in reports by *Daily Monitor*<sup>92</sup>, the *New Vision*<sup>93</sup> and the *Red Pepper*<sup>94</sup>.

Furthermore, on September 27 to September 29, 2011, the three news websites published an article in which the Inspector General of Police (IGP) Kale Kayihura linked a protest group, Activists for Change, to terrorism. The reports quote Kayihura stating that he had information that the group was recruiting youth trained in terror tactics in such places as Afghanistan<sup>95</sup>. Activists for Change is reported to have planned to hold a rally to protest the rise in commodity prices. The Police chief is also quoted as saying that the group plans

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<sup>90</sup> *Daily Monitor* was previously referred to as *The Monitor* until the newspaper rebranded in June 2005.

<sup>91</sup> See <http://allafrica.com/stories/200404010140.html>, accessed on February 28, 2011.

<sup>92</sup> <http://www.monitor.co.ug/News/National/-/688334/1235552/-/bj99a1z/-/index.html>, accessed on October 7, 2011.

<sup>93</sup> <http://allafrica.com/stories/201109131009.html>, accessed on October 7, 2011.

<sup>94</sup> <http://redpepper.co.ug/welcome/?p=18620>, accessed on October 7, 2011.

<sup>95</sup> <http://www.monitor.co.ug/News/National/-/688334/1243814/-/bio1r6z/-/index.html>, accessed on September 29, 2011.

to use the rallies to spread sectarian and erroneous propaganda to take advantage of disgruntled sections of society and hope to overthrow the Government<sup>96</sup>. The media consequently did a follow up on the accusations on terrorism. The *New Vision* published an article in which Activists for Change denied links to terrorism<sup>97</sup>, while the *Red Pepper* reported that the group had instructed its lawyers to start a private prosecution of the Inspector General of Police (IGP) for linking them to terror activities<sup>98</sup>.

In my view, the two examples demonstrate that the media is cautious when publishing articles about terrorism. The coverage arises from court cases or comments made by authorised government officials such as the IGP.

### **5.1.2 A review of the defamation clause**

Interviewees at the *New Vision*, *Daily Monitor* and the *Red Pepper* established that media houses that have both paper and online editions have been sued over defamatory matter on all these platforms. John Kakande explains that some of litigants<sup>99</sup> who have sued the *New Vision* print edition over defamatory matter have also made reference to the articles published on the website.

*“In defamation cases which have come up against the New Vision paper, some of the litigants argue that the story published in the New Vision damaged them and the damage was so extensive because the stories were online, therefore, they were read globally. And that has been used to push up their damages. That so far has been the case but no case has come up specifically on a story online”.*

Kakande implies that the defamation cases against the *New Vision* website have arisen because litigants are seeking more compensation for damages to their reputation. The litigants sue the *New Vision* newspaper since they are of the assumption that the articles in the print edition were also published online and seek more compensation on the argument their reputation was further damaged since the publication was online and read globally.

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<sup>96</sup> <http://redpepper.co.ug/welcome/?p=19473>, accessed on September 27, 2011.

<sup>97</sup> <http://www.newvision.co.ug/D/8/13/766384>, accessed on September 30, 2011.

<sup>98</sup> <http://redpepper.co.ug/welcome/?p=19646>, accessed on September 29, 2011.

<sup>99</sup> A person who files a legal suit against a media house

Rita Kabatunzi explains that the *New Vision* has not had a case in which litigants have sued only the website over publication of defamatory matter. She states that defamatory suits they receive which make reference to articles on the website are a ‘cause of action’ and not the ‘cause of the suit’. This implies that they do not get sued because the supposedly defamatory matter is on the website but because the litigants seek higher damage compensation costs by citing the website as an additional platform that published the defamatory matter. *“No one has ever sued flat out, that there is an issue with the website. It is just cited as a way to get more damages and show how widespread the damage was,” Kabatunzi explains.*

Alex Atuhaire, the news editor at *Daily Monitor*, also notes that they receive many suits in which individuals and the Government sue over defamatory matter. He explains that, *“Criminal libel are those (suits) brought against us by the Government, especially when we publish information about the security. Then the civil libel is by individual people, especially politicians who do not want to be exposed”.*

Atuhaire explains that they have not had cases in which the *Daily Monitor* website on its own has been sued over publication of defamatory matter.

*“They (litigants) say that since you publish both in the newspaper and online and this online publication has been read all over the world, it is used as justification for high damages. We have not had many of such cases but they use it (publication on the website) as some of the arguments to deserve higher damages.”*

Arinaitwe Rugyendo, the managing editor at the *Red Pepper*, shares a similar view on litigants citing news websites as a means of getting higher damages for defamatory matter. He explains that while the *Red Pepper* has not been sued over defamatory matter on its website, the case is usually made.

*“The case is usually made that your article was published widely, even on the Internet, therefore, the amount of damage that has been done is beyond proportion because the Internet is such a wide area, that they cannot imagine the amount of damage that has been caused. So it is usually cited but the site (Red Pepper website) has not been sued maybe largely because it is still young. I think we started it around February (2011). That is around four or five months. That has not happened but of*

*course publication of that nature also is potentially attractive to any legal suits anyway from anywhere and from any corner”.*

The respondents from the three major media houses all concurred that the defamatory suits they receive result from articles published in their paper editions. In situations where the litigants refer to articles on the websites, this is often to show further damage to their reputation, hence the basis for justifying additional payment in compensation. Representatives from the three media houses stated that they had not received cases in which their news websites, as individual platforms, were sued for publication of articles.

In my view, this can be due to the fact that a large section of the public perceives news websites as replicas of paper editions. James Glen Stovall (2004) refers to this as shovelware; the practice of simply shifting content produced by the organisation for another medium (newspaper, radio, or television) to the website with little or no change (Stovall, 2004: 16). The challenge of this type of publishing is that it does not recognise the web as a separate medium (Stovall, 2004: 17). Therefore, the three news websites- *New Vision*, *Daily Monitor* and the *Red Pepper*- can be said to be viewed by the public as additional platforms for the duplication of articles in the paper edition. This is why they are not the ‘cause of the suit’ as Kabatunzi explains since the suit originates from the paper editions, which she refers to as the ‘cause of action’.

The reality is that while some articles that appear in the print editions, also appear on these news websites, they cannot be entirely categorized as shovel because they publish some articles online that are not published in the paper editions. This was highlighted by the *New Vision* during preparations to re-launch its website in October 2011. Louis Jadwong, the head of digital, is quoted as saying, “*The website will move away from being just a digital copy of the newspaper, to catering for the audience mainly by the E-paper*”<sup>100</sup>

The three media houses use both moderate and aggressive updating. Moderate updating is often used to update news websites during the emergence of breaking stories (Stovall, 2004: 17), while aggressive updating refers to a situation in which a media house employs staff members to post new items on a site throughout the day (Stovall, 2004: 19). I reached the conclusion that the three media houses use moderate updating during the pilot study of

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<sup>100</sup> See <http://allafrica.com/stories/201109270294.html>, accessed on June 3, 2012.

the news websites. On September 27, 2011, the breaking story in all the three websites was the death of death of Kenyan Nobel Peace Prize Laureate Wangari Maathai. *Daily Monitor*'s article was taken from AFP<sup>101</sup>, the *Red Pepper* obtained its story from Reuters<sup>102</sup>. The *New Vision* did not indicate the news agency from which it sourced its article<sup>103</sup>. The websites followed up the breaking story with features and an editorial on Maathai. *Daily Monitor*, owned by the Nation Media Group with headquarters in Kenya, ran a feature written by Gitau Warigi, political analyst at *Daily Nation*, also owned by the Nation Media Group. The website, therefore, had the advantage of sourcing feature articles from its Kenyan publication, *Daily Nation*. The only local content on the passing of Maathai was an editorial by *Daily Monitor* and the *New Vision*.

A visit to all the three media houses when conducting interviews in June and July 2011 showed that they have specific writers and editors in charge of the websites, which is proof that aggressive updating is done to some extent. Articles from the online reporters either have their byline or at times they indicate 'online reporter'.

In my view, defamation suits restrict media freedom in two ways. Firstly, in most cases the litigants demand for hefty sums of money as compensation. When they cite news websites as an additional platform in order to make get more payment, this could lead to censorship by either journalist or the media house in cases involving prominent personalities, especially politicians, for fear of attracting legal suits. This is likely to be the case in situations whereby a media house has lost a case and has been forced to pay hefty sums in damages. Secondly, defamation is treated as a criminal offence, implying that the journalist, as an individual, has to pay personally. The *New Vision* legal officer, Rita Kabatunzi, is of the view that the law of defamation should be treated as a civil and not criminal offence. She questions why a journalist should pay personally for an offence committed in the performance of his or her duty. This law can therefore, be argued to have a chilling effect on journalists, hence leading to omission and self-censorship.

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<sup>101</sup> <http://www.monitor.co.ug/News/National/-/688334/1243138/-/bio77hz/-/index.html>, accessed on September 27, 2011.

<sup>102</sup> <http://redpepper.co.ug/welcome/?p=19356>, accessed on September 28, 2011.

<sup>103</sup> <http://www.newvision.co.ug/D/8/835/766035>, accessed on September 28, 2011.

### 5.1.3 Implications for the law on sedition and criminal libel

Timothy Kalyegira's lawyer, Ladislaus Rwakafuuzi, challenged the charges of criminal libel against his client, arguing that the law requires publication of some prohibited matter in a permanent form but for the case of Kalyegira, the alleged publication was done via cyberspace and no one knows where he was geographically<sup>104</sup>.

Kalyegira's lawyer's argument highlights the challenge of regulating news websites because they are transnational; thus they are located and accessible throughout the world (Zeno-Zencovich, 2008: 110-111). While the *Uganda Record* could be argued to target the Ugandan readership, it would be difficult for the Government to provide evidence that Kalyegira published his articles in Uganda. Retrieving the articles could also pose a challenge.

In an interview on July 8, 2011, Kalyegira notes that there are no laws that guide publication on the Internet and argues that the law of criminal libel, which he is charged with, is no different from the outlawed law of sedition. He cites the complexity of applying the charge of sedition to articles published on news websites.

*"I could see that even during my interrogation, the laws of Uganda demand that that publication of sedition must be one sort of in circulation. The traditional sense; it is a newspaper- (New) Vision, (Daily) Monitor- it is purchasable on the streets. Mine was online only so it was difficult to explain to people that you said 'I tried to incite the public' because for the Internet, there are no leaflets to go round. People forward those to each other but in theory, I put it up on the Uganda Record, I did not send it out. So technically speaking whoever comes to the Uganda Record or any website goes there of his own, I do not attempt to solicit them".*

The challenge of regulation of news websites due to their transnational nature is also highlighted by Zahara Nampewo of the Human Rights and Peace Centre at the Faculty of

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<sup>104</sup> See <http://www.monitor.co.ug/News/National/-/688334/1172874/-/c0wtytz/-/index.html>, accessed on December 7, 2011.

Law, Makerere University. Commenting on Kaylegira's case in an interview on July 12, 2011, Nampewo states,

*"The case illustrates the problems of the Internet that we have been talking about. That lack of physical definition, where does the crime originate from, where does it end? And who has the jurisdiction to intervene in it? Also, it shows the weaknesses in our laws. For example, criminal libel, I mean it would be very hard for the (Ugandan) Government to win the case against the journalist. I think we have had many cases, you know many charges against journalists, but the ones that really follow through are very few."*

Kalyegira's case has not been concluded to date. It is worth taking note that Nampewo believes that it will be difficult for the Government to win the case against Kalyegira. This due to the challenges of proving the location in which the offence was committed and showing that the President was intentionally defamed in Kalyegira's article taking into consideration that the law of sedition was outlawed thus granting the media more freedom to criticise the President.

Furthermore, articles published online may not be easily retrieved at a later date unlike publications in the print media. I experienced this while trying to access the articles by Kalyegira titled, *"Who set off the Uganda bombs?"* published on July 12, 2010 and, *"Why is Rwanda not condemning Al-Shabab?"* published on July 16, 2010. These articles cannot be retrieved. Or sometimes when an article on a news website is retrieved, not all of it can be accessed. This is also the experience I have faced while trying to retrieve old articles from *Daily Monitor* and the *New Vision*. A number of them have to be accessed using the website, AllAfrica.com and sometimes, only a few paragraphs of the retrieved article can be accessed. I am of the view that the challenge of retrieving the articles, as well as providing proof Kalyegira's articles were widely read, is likely to weaken the government's defence in the case.

Gerald Businge, a multimedia graduate from C Berkeley University in the United States, also cites the challenge of legislation for news websites. In an interview on June 28, 2011 in which I sought his view on the case involving Kalyegira, Businge said, *"His (Kalyegira's) defence is that the Government has to prove that the crime was committed in Uganda. And of course that raises challenges for the law enforcers in a way."*

This is because the Government has to prove the offence was committed in Uganda yet most of the news websites in Uganda are hosted in other countries.

The majority of news websites in Uganda do not use the .ug domain, nor are many websites hosted in Uganda due to bandwidth and infrastructure limitations<sup>105</sup>. For example, Ronald Muyimba, the *Daily Monitor* Internet manager, says, “We host the <http://www.monitor.co.ug> in Europe. However, some other sub-domains like <http://blogs.monitor.co.ug>, <http://sms.monitor.co.ug> and <http://epaper.monitor.co.ug> are hosted in the USA. So, for all our new media websites, content will be hosted in the USA.”

When I asked him what part of Europe the media house hosts its content and why it chose Europe, Muyimba’s response was,

*“www.monitor.co.ug is hosted in London, United Kingdom and this is because our parent company, Nation Media, chose to host in this place. Otherwise I host the rest of the sub-domain in the US because this is where the Internet back-bone is. Some years back, the Internet used to be faster in the US than any other part of the world; for some reason, these things have now changed. It is actually faster in Asian countries like South Korea, Japan and Hong Kong.”*

The *Uganda Record* ([Ugandarecord.co.ug](http://Ugandarecord.co.ug)) is hosted at The Planet.com Internet Services. The IP 74.54.226.56 links to a server in Houston in the US.

Additionally, criminal libel is being challenged at the Supreme Court in Uganda on grounds that it is inconsistent with the Constitution, which is the supreme law of the land<sup>106</sup>. Godfrey Wokulira Ssebaggala, the programmes coordinator at Human Rights Network for Journalists in Uganda, takes note of the petition against the constitutionality of criminal libel and argues that the law is aimed at limiting media freedom in Uganda. In an interview on July 20, 2011, Ssebaggala said,

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<sup>105</sup> See <http://opennet.net/research/profiles/uganda>, Accessed on December 12, 2011.

<sup>106</sup> See <http://www.monitor.co.ug/News/National/-/688334/1172874/-/c0wtytz/-/index.html>, accessed on December 7, 2011.



*“Criminal libel is being still challenged at the Supreme Court. So we have not had a law but our government is using old fashioned laws to track out charges against bloggers, publishers online. Basically that is it.”*

In my view, criminal libel restricts media freedom guaranteed in Article 29 (1) of the 1995 Constitution because it indirectly forces media practitioners into censorship of the powers that be for fear of the repercussions. Given that the media are business enterprises, the huge sums of money often demanded by prominent litigants could be said to restrict what may be published. Also, in criminal libel suits, the journalist risks prosecution and their right to be granted bail is not automatic. The fear of imprisonment is also likely to prompt the journalist to draw the line on any criticism of prominent personalities.

#### **5.1.4 Examining the Regulation of Interception of Communications Act, 2007**

While no journalist has been charged under the law so far, legal scholars and media practitioners consider it a threat to media freedom. Zahara Nampewo notes the lack of clarity in the Act. In an interview, she explains,

*“the Act is problematic in itself because it is not very clear when communication may be intercepted. In Section 5 (1), it states that ‘where there are reasonable grounds’ to believe that gathering of information is necessary... concerning the security of the state, then the information may be got through interception. And then the Act fails to describe this- What is it reasonable?”*

Nampewo also questions the justification for authorizing the minister for security to intercept communication. She says the Act,

*“talks about the minister in charge of security. I find that in contradiction for the interception of communication. We have an ICT (information and communications technology) ministry. We have other ministries where I think this should have fallen rather than the ministry of security. Of course they say grounds of security of the nation but there are other grounds where you can intercept. So I thought that that is the wrong place; the wrong minister to oversee the Bill, then of course the wide powers that he has”.*

Section 17 of the Act states, *“the Minister may make regulations for carrying into effect the provisions of this Act.”* Another major challenge that Nampewo notes with the Act is the lack of regulations that operationalise the Act. She explains,

*“...you have the regulations which operationalise, which give flesh to the particular Act. So, they talk about what is the right, who is the person in charge of this, who is the monitoring agency, setting up an agency to do this and the other. So we have the Act in place, the Interception of Communications Act, then but I do not think the regulations are in place yet. So that is also a problem. And the Act talks about the setting up of a centre which will oversee the interception of communication. So without the regulations, even that centre cannot be in place”.*

In my view, while the Government would make the case that the Act is aimed at protecting security of the state, this law may be used to limit criticism under the guise that the criticism is in breach of national security. This does not serve the democratic process because it does not promote open debate and discussion by citizens in matters of governance as advanced by Ronald Dworkin (Warburton, 2009: 3-4). Besides, why should the power to intercept communication be vested in the minister in charge of security? I am of the view that no authority has the right to intercept an expression because it is an inalienable right. I believe that those who may be offended after an expression has been made should seek redress in court but not try to hinder the expression from being made under the pretext of the implications it is bound to have. The interception of communication by the state is cited by Guy Berger as one of the challenges to the development of ICTs in Africa (Berger, 2007: 14).

The Regulation of Interception of Communications Act also demonstrates that while regulations that may regulate new media such as the Internet are being passed in Uganda, they have loopholes and that it takes time to have them operationalised. However, Gerald Businge notes that while no charges have been preferred against media practitioners under the Act, it is still a potential threat to media freedom.

*“The minister (of security) and people he authorises have power to intercept your communication- mobile and online. These tools are so systematic that once someone knows a few basic like your IP address, your e-mail, the person who hosts you, it is*

*easy to track your communication. So in a way, it has not happened but there is that potential of blocking people's freedom of expression".*

Businge, however, also notes that while the law may be in place, the state faces challenges in implementing it.

*"Online is a very different media. The gap is in the implementation. It is just that the Government does not have the capacity. They could monitor all these things but how many e-mails are they going to monitor? It is easy to monitor a newspaper. With online, well, articles you could read through all of them but it is not that easy for them (state) to monitor and put very stringent laws on them".*

### **5.1.5 Copyright and Neighbouring Rights Act, 2006**

In an interview on June 12, 2011, Ephraim Kasozi, a court correspondent at *Daily Monitor*, states that cases of copyright infringement arise among artistes and advertisers as opposed to news websites.

*"Cases of copyright are among artistes and advertisers. That is where a number of cases have been coming up. But also you realize that such cases have been settled out of court through negotiation rather than litigation."*

Kasozi acknowledges that while there have been incidents in which people attempt to use other people's information published on websites, he believes that the cases are minimal. He explains that the few cases brought up in court could be due to lack of awareness by the public of the Copyright and Neighbouring Rights Act, 2006 or the minimal penalties that the Act prescribes for copyright infringement.

*"The other thing that limits such cases from coming up is the issue of the knowledge of the law. The law is not known by the public. If you go out and ask, do you know about the copyright law? They say, 'what is this you are talking about?' Even when you look at its penalty, the penalties are not up to date. For instance, if someone wrote a book and you copied it, the law provides for lesser penalties. And I think that alone hinders people from going to court."*

The *New Vision* legal officer, Rita Kabatunzi, is of the view that cases of copyright infringement such as using one's story without accrediting or without permission from the

author are common among news websites despite having the Act in place. She cites the challenge of enforcing the law since cases would have to be lodged with an international body such as the World Intellectual Property Organisation (WIPO) which may be a costly venture. Kabatunzi notes that although those aggrieved under the Act could still file a suit under Ugandan law, it would have to fall under another law.

*“There is nothing barring you from filing a suit under the Ugandan law, but it will have to come under like I said, either you are saying you breached the principles of the Press and Journalists Act or you infringed Copyright under this Act. That is the way it would be, but we do not have a direct law that you would quote for our websites in Uganda. That creates a bit of a problem because it is a different world (e-world) and things are done a bit differently.”*

Kabatunzi notes that there is lack of awareness among members of the public about the law and cites the difficulty in enforcing it due to lack of a particular responsible person or body.

*“There is not much effort to educate and I think it is because the laws are scattered all over the place so there is no one particular person responsible...It is left to the interested parties and I think it will be difficult (to enforce)”.*

Gerald Businge is also of the view that it is difficult to enforce the copyright law online since he believes that readers are not concerned about where an article was published first.

*“It is difficult to practice professional journalism online. For the market reasons; because of the way the market works. Online is the kind of medium where it is difficult to enforce copyrights. Users do not mind where the article first came from. Traditionally, we have moved from the ideals that we had to almost the low-end practice”.*

#### **5.1.6 Assessing national law in light of international provisions: The Computer Misuse Bill, 2008 vis a vis the Budapest Convention on Cybercrime**

The Computer Misuse Bill is likely to affect publishing on news websites in regard to forwarding of defamatory material, copyright infringement and child pornography. This also creates a challenge since these offences are prescribed in other laws. It can be argued

that there is a duplication of the laws in Uganda which is likely to lead in uncertainty and speculation.

The *New Vision* editor, John Kakande, concurs that the current legal framework under which news websites operate is speculative and that when the laws were designed, web journalism had not taken ground in Uganda.

The lack of clear laws may on one hand be beneficial for news organization because it implies that they are operating in an area of no rules. This ideally would mean that websites have the freedom to publish without restrictions. However, it could also imply that the websites have to carefully and cautiously take decisions about what they can publish, prompting censorship on some issues

Nevertheless, in my view, the Computer Misuse Bill, 2008 shows that legislators are becoming aware for the need to regulate the E-world such legislation is broad and not yet operationalised. However, despite knowledge of the need to legislate the Internet, law makers face the challenge of designing and adopting both local and international legislations. The Budapest Convention on Cybercrime in my view illustrates the challenge African countries face in adopting international legislations for the Internet. Online legislation is a complex process that tries to take into account how the national legislation fits in with the international legislation given that the Internet transcends borders as argued by Anine Kierulf (2009: 56).

The challenges for legislation on the web in Uganda such as the lack of a specific law dealing with news websites, as well as implementation problems can be said to be similar to those in other African countries. It is a sign that many African are still dealing with the difficulties of formulating legislation at national level, which explains why it may even take longer for them to adopt international conventions. It is also likely that there may be hesitation by African governments to ratify the Budapest Convention on Cybercrime due to a likely conflict in national and international law given that international legislation is bound to take precedence.

## **5.2 Non-legalised or illegal measures that restrict publication on news websites**

These refer to unlawful measures undertaken by the Government to restrict publication of articles on news websites. The study analysed two major ways in which the Government

attempted to restrict publication online. They are attempts at shutting down news websites and blocking links to social network sites. I refer to these measures as non-legalised because the Government had no legal backing in preventing access to and publication of websites. It reportedly forcefully tried to prevent publication on websites.

### **5.2.1 Attempts at blocking news websites**

A website block refers to a measure undertaken by people of authority to stop access to a website through technological means. Many times, this is achieved with support from Internet Service Providers (ISPs). The first reported case of an attempt to shut down a website by the government in Uganda was in 2006 and involved *Radio Katwe*. According to Reporters Without Borders<sup>107</sup>, the incident occurred on the eve of the February 23, 2006 presidential and parliamentary elections in Uganda. The organization states,

*“All the country’s Internet Service Providers (ISPs), MTN, UTL, Africaonline, Spacenet and Busnet have made the site inaccessible. UCC (Uganda Communications Commission) officials justified the decision, saying that Radio Katwe ‘was spreading rumours’ and damaging the country’s “security and harmony””*<sup>108</sup>.

Reporters Without Borders criticised the attempted block on grounds of its legality.

*“Blocking access to an online publication is an important decision, which should be taken only by a judge and then as a result of an independent judicial procedure.”* It added, *“It is not acceptable for an organ of government alone to decide on this kind of step. In any case, the managers of radiokatwe.com should have the opportunity to appeal against the UCC decision, which has not happened so far.”*

The reported attempts to block *Radio Katwe* can be argued to have raised concerns and suspicion among media practitioners of temporary blocks by the government in situations when their websites are unavailable. The International Freedom of Expression Exchange (IFEX) published an article in February 2006 in which they quoted the then *Daily Monitor*

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<sup>107</sup> An organization that advocates for press freedom around the world.

<sup>108</sup> See <http://en.rsf.org/uganda-net-censorship-reaches-sub-saharan-24-02-2006,16569>, accessed on December 14, 2011.

managing director raise concerns over the website's unavailability. *"Our website has been going offline every day for the last three days for several hours at a time,"* Conrad Nkutu is quoted to have said adding, *"while the problem appeared be a technical glitch, we are also suspicious it might not be."*<sup>109</sup>

In an interview with the *Daily Monitor* news editor, Alex Atuhair, I inquired whether there had been attempts at blocking the website. Atuhair's response was, *"During the election in 2006, I think there was a general problem, but ours was specifically jammed."* He is of the view that the attempts at blocking other news website arise because the online media can be said to have more freedom than the print and broadcast platforms, which he feels poses a threat to the Government.

*"There is a lot of freedom in publishing online. For example, when you publish, people write in and they are not censored. So, that kind of freedom to say whatever everybody wants frightens the Government and so that is the reason behind the attempts to shut down websites that are publishing either independent information or publishing information that specifically hurts the government like Radio Katwe. They ideally publish information that hurts the Government."*

In April 2011, *Daily Monitor* reported lack of access to the Internet during the Walk-to-Work campaign. The website reported, *"Internet access for some companies, including Daily Monitor, was interrupted for some time yesterday (April 14, 2011) afternoon. As a result, this newspaper's ability to update its website and other web-based media with live feeds was compromised"*<sup>110</sup>.

The article added that efforts to reach the UCC executive director, Godfrey Mutabazi, and then ministers Aggrey Awori (ICT) and Kabakumba Masiko (information) over the lack of access to the Internet were futile since their phones were switched off. This can be said to

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<sup>109</sup> See [http://www.ifex.org/uganda/2006/02/23/critical\\_website\\_radio\\_katwe\\_blocked/](http://www.ifex.org/uganda/2006/02/23/critical_website_radio_katwe_blocked/), accessed on December 14, 2011.

<sup>110</sup> See <http://www.monitor.co.ug/News/National/-/688334/1144974/-/c2q28yz/-/index.html>, accessed on December 15, 2011.

the latest incident in which the news organization suspected an attempt by the government to temporarily block its website.

I mention attempts at blocking news websites because some respondents argued that the Government can only attempt to restrict access to the site but it cannot block it completely. The *Daily Monitor* Internet manager, Ronald Muyimba, explains that it is difficult for the Government to block a news website.

*“The Internet backbone is in the US and unless you have access, that is when you can block. Like in China, they are able to do that because they use Google. It is difficult. It is not easy to block; you have to work with another country which will provide access. You can only block what is in your area”.*

Davis Weddi, the former *New Vision* online editor, concurs that access to news websites cannot be completely blocked. He explains,

*“At one point in time (2006), the Government ordered the Uganda Communications Commission to shut down Radio Katwe. So what the Uganda Communications Commission did not know is a website can actually remain existing; whereas you have blocked it here in Uganda, there are other ways of accessing it so they shut down the IP, they blocked that IP but there is code and as soon as they did that, these guys (Radio Katwe) spread code for viewing their website. They redirected their site. They cannot shut down a website unless the owners of a website agree but a website can continue being online as long as where they are hosting they have no problem”.*

Gerald Businge, who also runs a news website, *Ultimate Media*, further concurs with the argument that a website cannot be blocked.

*“I feel comfortable about running a news site. I try to be as responsible as possible, make sure my journalists are responsible but I know there is nothing the government can do to me. They cannot stop my website, they can only block it from Uganda. I do not target Ugandans only, there are Ugandans outside Uganda. Actually, what the government can do is stop sites from being accessed in Uganda- people from Uganda accessing the site- but if my site is hosted in Europe, Canada or Norway, there is no way you are going to block it”.*



In my view, the lack of the technical means to block news websites, especially by governments in developing countries like Uganda implies that the Internet extends media freedom. It can be said to reinforce the confidence in media practitioners about their freedom to publish online because they know that they cannot be easily shutdown as had been the case with the print and broadcast media. This highlights the character and nature of the Internet as a medium that cannot be bound by the same rules as those of the traditional media.

Sam Apedel, the former *New Vision* website manager, states that there have not been attempts by the government to block the organization website. When asked about attempts to block other news websites such as *Radio Katwe*, he is of the view that counter information should be provided as an alternative.

*“My view is liberal; people write information about you, you give them counter information. You give them more information so that the ideas can be exchanged because at times to block the website or shut it down I think that is not a civilized way of doing things. You can sue, but of course there is a challenge with the Internet, where do you file the suits?”*

Apedel, however, also points to the complexity in blocking a website. *“With Radio Katwe, they managed to shut it down, you could not access it, but people learnt how to access it so it is difficult. Because if people want to get the information there, there are always technical ways of bypassing (the block).”*

Arinaitwe Rugyendo also said his team had not experienced any attempt to block the *Red Pepper* website but makes reference to the interference of the *Daily Monitor* website after the February 2011 elections. *“There was some interference suspected to have been by the state because they (website) were giving live updates. So there was some interference to the site and it could not load properly and fast. So there were some suspicions around interference”.*

Rugyendo also refers to the attempted block by the Government on *Radio Katwe* in 2006 as some of the cases he had heard of. He, however, views the move to attempt to block a site as a curtailment on freedom of expression and freedom of the press.

*“It is a dent on the freedom of expression and freedom of the press regime in the country. Why? Because why would you take down a website? It means you are suppressing. I could say it is suppression of information, and curtailing freedoms of press and expression. But at the same time, I think it is for lack of a proper legal or regulatory framework in place that can take care of this recent innovation. So, that is why possibly the state would react by taking down a website or suing it. So I think it is not yet understood whether a story on a site is a publication or it is an expression, what do you call it? Is it a newspaper? What is it? What is a news site anyway? Are these defined? They are not defined in our legal framework that is why the usual suspected move in terms of how the state reacts is by taking down the site.”*

Other interviewees also make reference to the *Radio Katwe* case in 2006. They include Gilbert Mugasha, the *Red Pepper* online editor, who believes that the news website should be responsible in its reporting. Dalton Kaweesa, a reporter with the *Red Pepper*, also cites the case of *Radio Katwe* and is of the view that a block on a website does not solve the problem. In an interview on July 20, 2012, he says,

*“I do not think blocking (websites) solves the problem other thanacerbate the problem. You see a silent man is more dangerous than someone who opens up because when you shut him down, you do not know what he is doing clandestinely. So the government is inviting more problems by shutting down websites. So logically, I would think the government would respond to what has been put on the website and show the other side then leave the public to judge, who is right, who is wrong”.*

Denis Jjuuko, a media consultant, also takes note of the *Radio Katwe* case but is uncertain on whether the failure to access the site was as a result of a block by the Government. He, however, criticized the site’s reporting, saying it relied on rumours and sums it up as a blog rather than a news website.

*“Radio Katwe was not necessarily journalism, it was a lot of stories done on hearsay. I am not saying that they should have blocked them, but it was not really journalism, it was more of the way people can always express what they think about; a blog, as you know a blog where people write what they think, whether it is right or wrong, it was more of a blog which was shut down.”*

Comments were also sought from government officials who work for bodies that regulate the Internet in Uganda and promote government programmes through the media. Asked about media reports in which the government is said to have asked UCC to order the block of *Radio Katwe* in 2006<sup>111</sup>, Godfrey Mutabazi, the UCC head, referred to the articles published on the site as defamatory. In an interview on July 8, 2011 he said,

*“It was defamatory. I was not here at that time, the details I gather is that very defamatory statements that were coming on that platform. Very very completely primitive and out of step with the public views. Yes, it was insulting, abusive and so on and so forth. We do not mind criticism really, but nobody would have allowed that kind of... it was typical of a primitive society. So that is why I would expect the steps that were taken.”*

In my view, Mutabazi’s comment “... *that is why I would expect the steps that were taken,*” is an indirect confirmation that *Radio Katwe* was blocked. I also reached this conclusion from analyzing the justification he gave - “*very defamatory statements that were coming on that platform*” and “*nobody would have allowed that kind of...*”

Fred Opolot, the executive director of the Uganda Media Centre, referred to *Radio Katwe* as an activist site rather than a news website.

*“Radio Katwe is comic. I do not think it is even worth a comment. I have actually never seen truth coming from Radio Katwe. These are just activists, people who call themselves political activists setting up such websites presupposing as news websites whereas they are completely not”.*

The analysis from the interviews provides interesting views. While media practitioners were against the shutdown, the government officials were of the view that it was justified.

Sam Apedel was the view that counter information be provided to challenge the reports by *Radio Katwe*. Apedel highlights the tolerance argument cited by John Locke, as well as contemporary scholars like Lee Bolinger. The gist of the arguments by these scholars, as discussed in section 2.1.2 is that human beings have a tendency to dislike the views held by

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<sup>111</sup> See <http://www.newvision.co.ug/D/8/13/482528>, accessed on December 15, 2011.

others but that free expression exposes individuals to other views and with time, they can on the one hand be said to learn to accept and live with divergent views.

Arinaitwe Rugyendo believes attempts at shutting down news websites curtails free expression. This is because it hinders prevents the free flow of ideas, which John Stuart Mill noted will increase the likelihood of the emergence of truth and elimination of error (Warburton, 2009: 25).

Dalton Kaweesa warns that when critical views are suppressed, they can have even greater harm once they have the opportunity to surface. He indirectly notes that suppression leads to intolerance.

While the government officials did not specifically acknowledge attempts by the government to shut down *Radio Katwe*, their arguments implied that they felt the action was justified so as to prevent the spread of what they referred to as untruths, primitive, comic and defamatory statements.

In my view, the attempted shut down of *Radio Katwe* demonstrates that the government views websites as platforms that are not different from the print and broadcast media which can be closed down whenever they publish offensive articles.

The government has in the past closed newspapers such as *The Monitor* in 1993 and ordered the closure of radio stations such as CBS in 2009 over accusations of inciting the public<sup>112</sup>. I am of the view that the Government felt it could apply similar measures in dealing with *Radio Katwe* in 2006. This implies that it did not appreciate that the Internet was a different medium and that websites are not hosted in Uganda. This was evidenced when *Radio Katwe* developed proxy sites and overcame the blockade. The attempted shut down also demonstrates the undemocratic nature of the Government because it can use any means at its disposal to restrict publication of what it deems offence articles, which is a disregard of Article 29(1)(a) of the Constitution that guarantees media freedom. The attempted shut down was in 2006. The next section will discuss current similar non-legalised measures that have restricted free expression on the web in Uganda.

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<sup>112</sup> See <http://www.monitor.co.ug/News/National/-/688334/1043002/-/cltoj9z/-/index.html>, accessed on June 2, 2012.

### 5.2.2 Access restrictions on social network sites

The major news websites in Uganda- *New Vision*, *Daily Monitor* and the *Red Pepper* - have links to other sites which include advertising or social networking sites such as facebook and Twitter. At the height of the Walk-to-Work campaign in April 2011 by opposition politicians in Kampala, *Daily Monitor* reported that UCC had instructed Internet Service Providers (ISPs) to block access to facebook and twitter accounts for 24 hours.

The article, however, stated, “*Internet services carried on without glitches that day (April 14, 2011) save for subscribers on one network who experienced intermittent interruptions.*”<sup>113</sup> The article quoted Quinto Ojok, who signed a letter in acting capacity for UCC’s executive director Godfrey Mutabazi, as saying the social network sites like Twitter and facebook be shut-down for security reasons. The letter is said to have read,

*“We have received complaints from security that there is need to minimise the use of the media that may escalate violence to the public in respect of the ongoing situation relating to Walk-to-Work mainly by the opposition in the country.”*

The letter added, “*You (ISPs) are therefore required to block the use of facebook and Twitter for 24 hours as of now, that is; April 14, at 3:30pm to eliminate the connection and sharing of information that incites the public.*”

The article adds that Mutabazi, however, said there had been a mix-up in the letter. The news article quotes him as saying, “*The letter was written in my absence. We didn’t authorise [a] ban of any website and Ugandans are free to communicate.*”

This instruction to ISPs to shut-down social network sites for 24 hours on the basis of preventing the “use of media that may escalate violence to the public” is also a form of prior restraint which is only aimed at limiting free debate and the flow of ideas under the pretext of “security reasons”. This example highlights that the fight against state controls in form of censorship that was opposed by early English liberals like John Milton, Jeremy Bentham, James Mill and John Stuart Mill (Chiumbu, 1997: 47) still exists today.

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<sup>113</sup> See <http://www.monitor.co.ug/News/National/-/688334/1147082/-/c2o6bqz/-/index.html>, accessed on December 15, 2011.

According to media reports, the instruction by UCC to ISPs to block social network sites in Uganda drew criticism from the US government. *Daily Monitor* reports that the US deputy State department spokesman Mark Toner signed a statement which said, “*We are also concerned by reports that the Ugandan government has attempted to restrict media coverage of these protests and, on at least one occasion, block certain social networking websites.*”<sup>114</sup>

The article also quotes media scholars like Peter Mwesige, the executive director of the African Centre for Media Excellence, condemning the block by saying any attempt by the Government to muzzle the media is illegal. It also makes reference to Livingstone Ssewanyana, the executive director of Foundation for Human rights Initiative, as saying, “*Media freedom is a fundamental value in any democratic society.*”

Asked in an interview on July 8, 2011 about the letter by UCC to ISPs to shut down social network sites, Godfrey Mutabazi insists that there had been a mix-up in communication.

*“Again, I was not around. However, someone did not get exactly what was happening. Because people had complained that there was part of the society or part of the public was trying to use the Internet to incite the public into violence. And we cautioned the public and guided them to be cautious of that because that is the time riots were going on and the situation was a little bit fragile. So, a letter was written but we corrected it. We said no, that is not exactly what we meant to say. The purpose was to warn and caution the people to be very considerate of the public.”*

In my view, Mutabazi confirms the existence of the letter to Internet Service Providers but denies that the UCC ordered the shutdown of social networking sites. Statements like “*that is not exactly what we meant to say*” show that the government indirectly acknowledged that ordering the shutdown social networking sites was a mistake but dealt with this problem by denying that the instruction had been made.

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<sup>114</sup> See <http://www.monitor.co.ug/News/National/-/688334/1152282/-/c262gdz/-/index.html>, accessed on December 16, 2011.

Timothy Kalyegira notes that the attempt by the Government to block access to facebook and Twitter was caused by fear that the Internet would be used by opposition politicians to rally support in the Walk-to-Work campaign, as well as the influence from the North Africa uprisings in which the social media is reported to have played a role in rallying support against the governments in power.

The attempted reported block on facebook and Twitter in Uganda demonstrates that media practitioners believe that in times of unrest or protests, the intolerance of the Government is reflected when it resorts to non-legalised or illegal measures such as blocks on websites to limit the circulation of information and exchange of ideas. Given that the instruction to block the social network sites in April 2011 was provided by UCC, this shows that regulatory bodies have to work with service providers in trying to enforce the block. However, as media reports highlighted, some people could still access the social network sites, showing the challenges of implementing such a block.

### **5.3 Restrictions arising from socio-cultural issues**

Socio-cultural issues used in the study refer to those issues that media houses opt not to cover for fear of the implications that the coverage will have. It also refers to issues that are deliberately omitted or censored by media houses. This means there are issues or topics that may not be freely debated or published in the Ugandan media or which media houses take a stand on that the study explored.

#### **5.3.1 Homosexuality**

Views from media practitioners were, therefore, sought on the question of the coverage of homosexuality in relation to the editorial policies. John Kakande explains that the *New Vision* editorial policy cuts across all its platforms, including the Internet. He states that the media house only covers matters related to homosexuality when they are debated in Parliament. He explains that this decision was taken by the organization board members.

*“We have agreed on that issue (homosexuality), we shall cover the debate in Parliament but outside Parliament, the debate outside Parliament, we shall not for all our platforms. That is not legal generally, it is also an issue of values. There are strong views, but the view of the board is what does the debate serve? Whether for or against. The view is that giving platform to the debate would be like promoting*

*homosexuality even if what you have published is negative as far as homosexuals are concerned”.*

Apollo Mubiru, the *New Vision* online editor, explains the organization is drafting a policy that is expected to encompass its print, broadcast, online and digital platforms. However, the website follows the editorial guidelines for the print edition. He also states that the *New Vision* does not cover homosexuality unless it is debated in Parliament.

In my view, Kakande and Mubiru raise an important issue on the influence of top management (board) on editorial policy by the *New Vision*. The ownership factor, therefore, can be argued to impact on the organisation’s in-house policy. The media organization regards the homosexuality debate as being offensive to societal values. This is reflected when Kakande states, “...giving platform to the debate would be like promoting homosexuality even if what you have published is negative as far as homosexuals are concerned.” It is also interesting to note that the Cabinet is opposed to debate in Parliament on the Bill because it considers the discussion offensive to donors and ‘other sections of the public’.

In response to the question of the coverage of homosexuality issues, David Tumusiime, an online sub-editor with *Daily Monitor*, in an interview on June 13, 2011 said, “We let people express their opinion as long as they try to be responsible.”

Arinaitwe Rugyendo, when asked about the *Red Pepper* view on the homosexuality question, says they bring the issue to the public agenda.

*“Our stand has been to bring it to the agenda, the debate. So we have always like...exposed them. We are coming from a background that does not condone homosexuality. So we find ourselves having to publish their activities. And our stand is they (homosexuals) are free to do what they want to do, and so by publishing them, we cause debate about their issues. Because we bring it to the public agenda, so we cause debate. Basically that is what we do, but we do not have a stand that we cannot publish them. We do not have a particular static stand about this matter, we do not.”*

In my view, the responses from representatives from the three media houses showed that the issue of whether or not to cover matters relating to homosexuality is controversial.



Uganda does not recognize the rights of gays and this implies that legally, this is an issue which media houses trade carefully. However, the major limitation results from the societal norms. While the *New Vision* has a policy of non-coverage unless the matter is being discussed in Parliament, there seems to be no position by *Daily Monitor* and the *Red Pepper*. But from the interview with Rugyendo, it can be deduced that the coverage is most likely to be biased against homosexuals and their activities. Statements like “*we are coming from a background that does not condone homosexuality*” and “*we have always exposed them*” show how societal norms restrict what news websites in Uganda can publish in regard to the issue of homosexuality.

### **5.3.2 Religious matters**

Uganda does not have a state religion. Chapter 2 (7) of the Uganda Constitution states, “*Uganda shall not adopt a State religion*”. However, Christianity is the dominant religion in the country. Other religions practiced include Islam, Hinduism and Buddhism. The coverage of religious matters is treated cautiously by media houses.

Asked about the *New Vision* position on religious matters, John Kakande says, “*We are concerned with information to do with religion. Either against one religion or one religion against another... We do not allow one religion to attack another religion.*”

Arinaitwe Rugyendo explains that the *Red Pepper* takes a liberal approach in covering religious issues. He says, “*Our approach is liberal, we are not inclined to any (religious group) though we happen to be staunch Catholics.*”

### **5.3.3 Pornography/ nudity**

The tabloid press in Uganda has in the past been accused of promoting pornography. The *Red Pepper* has in the past been criticized by religious activists over its pornographic content which they argued was easily exposed to children. When asked about the tabloid’s view on pornography, Arinaitwe Rugyendo replied, “*Maybe, well if I could say nudity. We no longer do that. It is not palatable to publish a completely naked picture- that is pornography anyway. Pornography, articles with nudity of course.*”

In my view, Rugyendo’s assertion that “*it is not palatable to publish a completely naked picture*” could be said to be an admission that the media house has had to restrict

publication of pornographic material due to societal pressures. This points to another case in which the unwritten societal morals and norms have led media houses to censor themselves on coverage of pornography.

Pornographic material or photos are not published in the mainstream media houses such as the *New Vision* and *Daily Monitor*. For example, the Nation Media Group that is the majority shareholder of *Daily Monitor* has an editorial policy that cuts across its media outlets in the East African region. The 2009 editorial policy guidelines and objectives have a section on *obscenity, taste and tone in reporting*. It states that, “*the media should not publish anything that is obscene, vulgar or offensive to public good taste. A story, photograph or drawing/cartoon of questionable taste should have significant news value to justify its usage*”. It further states that good taste is to be determined by the prevailing social norms but stipulates two basic tests;

1. Is the depiction of a particular scene or language used likely to be regarded as filthy, revolting, repugnant, dirty or lewd?
2. With regard to pictures, the following should offer guidelines;(i)Is it vulgar and
  - (i) Is it vulgar or indecent?
  - (ii) Is it mere pornography?
  - (iii) Is its publication meant merely to make money by titillating the sexual feelings of adolescents and adults among whom it is intended to circulate? In other words, does it constitute an “unwholesome exploitation” of sex for the sake of money (Nation Media Group, 2009:11).

Therefore, the media house’s policy on pornographic material is largely determined by what can be referred to as the acceptable social norms in Uganda which in this case is regarded as immoral or a vice. In my view, discussion on pornography is controversial not necessarily because of the legal restrictions as is the case in Uganda but largely because it involves the question of morals. It is justified that children be protected from accessing pornographic material. It is also justifiable that adults who do not want to be exposed to pornography be protected as well. However, the challenge arises in striking the balance between catering for those that should be protected from pornography and those that want to access it. Restricting the media from publishing pornographic material can be argued to

restrict its freedom to provide a platform for the free flow of ideas and expressions. The issue of pornography in Uganda presents the conflict between societal norms and morals and the media's right to publish without restrictions. Furthermore, despite attempts by the proposed law to define pornography, the classification is not sufficient and clear, which makes it difficult to explicitly define the term.

#### **5.3.4 Bestiality**

Bestiality refers to sexual relations between a human and an animal. It is considered an unacceptable practice in Uganda. Section 145 of the Penal Code Act relates to unnatural offences. It states,

*“Any person who—has carnal knowledge of any person against the order of nature; has carnal knowledge of an animal; or permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.”*

The penalty for bestiality, therefore, is life imprisonment. Media houses like the *New Vision* do not cover news items on bestiality. Apollo Mubiru says, *“For stories of bestiality, we do not handle. We do not publish them either in online or the print.”*

In my view, the decision of whether or not to publish articles on bestiality is largely an editorial consideration. Some media practitioners may view its coverage as a matter of bad taste, while others are of the view that that coverage is considered publicity of the practice. However, the decision to censor bestiality by media houses implies that it hinders the free flow of ideas and discussion on the issue much as it may be controversial and offensive to some members of the public. The question of bestiality also presents a conflict between morals and freedom of the media in Uganda.

#### **5.4. Technical/ technological glitches that restrict access and publication by news websites**

Technical restrictions are used in the study to refer to those challenges news websites face in publishing articles that are technological in nature and which media practitioners have little or no control over.

#### **5.4.1 Internet archive of published stories**

Items posted online can sometimes be retrieved at a later time. This is one of advantages that the Internet offers its users. Records, documents or articles can be easily archived when the key words are typed in a search engines like Google or Yahoo. This can, however, pose legal challenges for a news website which may have been sued over an article it published. Sam Apedel, the former *New Vision* website manager, explains the difficulty of deleting stories which have attracted suits.

*“But there is a second complication once the story goes online because one time somebody sued us and we thought we had sorted it but the story still remained online. Even after we deleted the story, some search engines had kept it. So he wanted to sue us again thinking we had republished the story”.*

Davis Weddi, the former online editor, also cites a case in which against the *New Vision* in could not delete a story because it had been archived by other search engines.

*“The New Vision lost a case in which we were ordered to pull off stories, particular stories on someone... I do not remember the particular case but it was sometime back I think in 2007. Judges said remove that story from the website, then now because people had discussed and New Vision stories are archived by Google so Google keeps copies. And the judge said this story is still being seen but for us (New Vision), we deleted the original record but Google still had a copy. Now how do you deal with that? That is a very tough one.”*

In my view, while Internet archives make it easy to retrieve an article at any time and from anywhere, they on the other hand present a challenge to news websites because they restrict the media’s ability to control what they can and cannot publish. Once an article is posted online, there is no way of deleting it because it is registered and archived by other sites other than the news website that originally published it.

#### **5.4.2 Internet hackers/ crackers**

Hacking refers to unauthorized access of computer systems. Sam Apedel refers to this as a denial of service attack on a news website. He says the *New Vision* website was hacked into which limited their ability to access the site and publish articles.

*“One time, somebody- a group of hackers accessed our website and posted a picture of a clown on the front page. For some time we were not able to access what they call the content management system of the website on which you update. So we suffered but it was sorted.”*

Brenda Nakayiwa, an uploader at the *New Vision*, explains that at the time their site was hacked into, the news pages were empty and the hackers posted items on them.

*“You cannot know who hacked into the system. You just know that maybe someone got access to someone’s password and they really crushed it down. They would send messages that they could do it again. We tried to investigate, but what we did was change everyone’s passwords and limit people’s administrative rights in particular categories. So the rights of people were restricted by the programmer.”*

Gerald Businge also notes the ever-present challenge hackers pose to news websites.

*“There are people dedicated t to crack other people’s websites. They do not have to come with the military to close your station. Someone individually can close your station, your whole big investment. Technically, you cannot say you are above; you just have to keep building, get stronger. And because also there are many options, sometimes it is difficult to tell who is a better service provider, which is the best advice to take.”*

No cases of hacking were cited in interviews with editors and reporters from the *Daily Monitor* and *Red Pepper*. In my view, attacks in form of hacks on news websites are a technological glitch because they restrict publishing by denying access to the news website. This infringes on the media freedom to access and publish articles on the site.

## **5.5 Chapter summary**

The chapter has discussed the restrictions imposed on news websites examined how these restrictions affect media output. The restrictions were analysed from a legal, socio-cultural, editorial and technical perspective. A review of arguments by early and contemporary theorists was used to interpret the findings.

It can be concluded that the major laws that restrict publishing on news websites in Uganda include terrorism, defamation, sedition and criminal libel because they are in breach of

media freedom guaranteed in Article 29 (1) of the 1995 Constitution. The laws can be argued to indirectly prompt media practitioners into censorship of the powers that be for fear of the repercussions. Other laws like the Regulation of Interception of Communications Act, 2007 and the Copyright and Neighbouring Rights Act, 2007 could be said to be aimed at prior censorship of the media, implying that they restrict the free flow of ideas and information. The Computer Misuse Bill, 2008 could be said to highlight the duplication of laws because it deals with defamatory material copyright infringement and child pornography that are already provided for in other legal instruments.

It was also established that in some situations the Government has used non-legalised measures to restrict publication by news websites. The example cited by most respondents was the attempted shutdown of *Radio Katwe* over claims of irresponsible reporting. This has been portrayed as a sign of intolerance by the Government of contrary views and an attempt to stifle offensive views which is inconsistent with the values of free expression.

Social norms and values in Uganda have led most of the media houses into censorship in the publication of articles on homosexuality, pornography and nudity and bestiality.

Finally, the study reviewed technical challenges arising from publication on the Internet. The main technical glitch that affects publication by news websites in Uganda is Internet hackers. The retrieval of archives of previously published stories can also be said to have legal implications in situations in which a news websites is being sued for defamation. This is because the media house has no control in stopping access of the news article even if it is deleted from its website.

## **CHAPTER SIX**

### **CONCLUSION**

#### **6.0 Introduction**

Freedom of expression and that of the media is constitutionally guaranteed as evidenced in several local and international legal instruments. Nevertheless, this right is not absolute but it is subject to restrictions that are aimed at safeguarding other rights. This background formed the basis of the study of free expression on the Internet with the objective of examining the restrictions to publishing by news websites in Uganda.

I, therefore, developed three main research questions to guide the study:

1. What types of restrictions are imposed on news websites in Uganda?
2. Why are restrictions imposed on news websites in publishing their stories?
3. How do the restrictions imposed on news websites impact on media freedom in Uganda?

This chapter summarises the goal of the research process and evaluates the findings of the study. It provides an overall analysis based on the research questions.

#### **6. 1 Assessment of the overall nature of government**

An analysis of the nature of government provides a better understanding of how treats rights and freedoms such as expression and that of the media. This relationship is viewed in terms of its perception to these freedoms, the laws and policies it designs, as well as other non-legalised measures it undertakes in regulating such freedoms. This understanding is vital because analyses the second research question that explores the justifications or reasons why restrictions are imposed on news websites in publishing their articles. This discussion has been explored in section 1.4 on the background to the political and social environment in which the media in Uganda operate. The aim of this section, therefore, is to provide an analysis of the overall nature of government.

The history of governments in Uganda has been one characterized by civil wars and unrest. The country was ravaged by wars from 1966 to 1986 when the NRM government came to power and relative calm returned to the country. The incumbent President, Yoweri

Museveni, also came to power by the gun following a successful five-year guerilla war that he launched in 1980. In my view, the long history of wars implies that the governments from Independence can be argued to be cautious of critical groups and institutions such as the media. This view is highlighted by the fact that there has been a long history of state control of the media. It is only until 1993 that the government liberalized the airwaves allowing for private media enterprises to join the market as illustrated in Section 1.0. A year earlier, *The Monitor* was started, marking the start of independent news publishing.

The NRM government came to power with the promise of a fundamental change. It strived to achieve this through electoral reforms discussed in section 1.4.2. Notable among the reforms was the referendum was conducted in 2005 that saw the end of the dominance of the Movement system of government and the first multiparty elections were conducted in 2006. This electoral factor is significant because it can be argued to have ended the political period in which leaders came to power by of the vote and not the gun.

In my view, while the current government has strived to introduce reforms aimed at promoting other political rights and freedom as discussed in section 1.4.3 to 1.4.5, its historical military background impacts on how it relates with institutions such as opposition party members, civil society and the media.

I evaluate the historical attitude of suspicion from the government to institutions such as political parties and the media. An example that illustrates this is taken from the Walk-to-Work campaign by members of the opposition. The government viewed the protests as a ploy by members of the opposition to overthrow it as discussed in section 1.4.4. This shows that despite the electoral reforms after over 20 years of relative calm, there are still suspicions of military coup attempts on the part of the government.

The opposition political parties have in turn taken on a very critical view of the government and its activities. These are reflected in the form of protests and demonstrations.

I also take note of the similarity in the government's treatment of opposition members to critical writers and independent media houses. This has been reflected in the reported attacks on journalists as highlighted in section 1.4.3 that led to boycott by the journalists on government activities. It is also reflected in a letter by President Museveni in which he is reported to have referred to the independent and foreign media as "enemies of Uganda's



recovery” who “will be treated as such” as discussed in section 1.4.3. In my view, this attitude of suspicion is further seen in the perception of largely state owned media such as the *New Vision*. The question of ownership is a prominent consideration when assessing articles that it publishes when compared to independent media like *Daily Monitor*.

The suspicious perception of the government, especially to independent media can be said to have led to intolerance to divergent views and opinions evidenced in the reports to shut down critical websites like *Radio Katwe*, as well as temporary restrictions on access to social networking sites like facebook and Twitter. This suspicious attitude, in my view, can also be argued to lead to doubt by media practitioners when they experience difficulties in accessing their websites. While inaccess to the websites may be due to technical glitches, media practitioners, as illustrated in the *Daily Monitor* example may view this as an attempt by the government to limit access to their site.

However, the attempted shut down of news websites does not necessarily clamp down on critical voices as respondents like Dalton Kaweesa noted during an interview. I agree with his analysis because during the interviews, most of the respondents cited the example of *Radio Katwe* as a website which had reported attempts to have it shut down by the government. This demonstrates that the shutdown in essence led to site’s publicity.

Nevertheless, I note that that it is important to appreciate the context of events during which the study has been conducted. This was at a time of general elections, and at the height of grappling inflations and food prices. The shutdown of *Radio Katwe* was during the 2006 elections while limited access of social network sites was during a time of protests. Given this context, I make the argument that while the current government upholds rights and freedoms on one hand, it turns to despotic means to silence criticism during crises.

## **6.2 Legislation on the media**

The design of law can also be said to reflect the nature of government. The study analysed the laws that restrict on publishing by news websites in Uganda. The findings revealed that there was no specific law to regulate news websites in Uganda. The print media is regulated by the Press and Journalists Act, while the broadcast media is regulated by the Electronic Media Statute. While the Uganda Communications Act exists, it does not specifically address news websites.

Acts of law are vital because they define a media publication, establish procedures and functions of those that run media houses and stipulate how differences should be resolved. In my view, the lack of a specific Act for the Internet has led to speculation as has been cited by several interview respondents. The speculation results because newspapers are not defined by law, neither are the requirements and procedures for establishing them. This partly explains the lack of consensus by some respondents on whether *Radio Katwe* is a news website or a blog. While the Uganda Communications Commission has been reported to intervene in matters concerning news websites such the reports to shut down *Radio Katwe*, this jurisdiction is not provided for by law.

A key criticism of the laws was on their lack of clarity and operationalization. For example, the Anti-terrorism Act has been criticized for not clearly defining sections like “influencing the government”, and “intimidating the public or a section of the public” as discussed in section 5.1.1. The Regulation of Interception of Communications Act, 2007 on the other hand does not clearly define the communication that may be intercepted. It is also difficult to prove that a communication “is in aid of criminal activity” as has been discussed in section 5.1.4. The Act also lacks the regulations that operationalize it.

In my view, the gaps in the law further add to speculation by media practitioners on the legal boundaries of the law. One advantage of this is that the loopholes can be argued to be of benefit to the media since they present challenges for the government in winning cases as illustrated in the triumph by *The Monitor* in the national security case in 2004 and successful petition that outlawed sedition in August 2010.

There is also a duplication of laws regulating the media. This is illustrated in the example of the Computer Misuse Bill, 2008 and the Anti-homosexuality Bill. Section 20 of the Computer Misuse Bill, 2008, relates to child pornography, and the Bill refers to creating and forwarding defamatory material, as well as copyright infringement. The proposed Anti-homosexuality Bill is also argued to be a duplication of other laws criminalizing homosexual activities as discussed in section 5.3.1. In my view, the duplication of laws in turn leads to speculation and uncertainty about the legal boundaries by media practitioners.

Furthermore, the laws in Penal Code such as defamation and criminal libel are criminal in nature. This implies that a journalist personally has to pay for writing articles in the course of his or duty. The result is that it sends a chilling effect to journalists. This can be argued

to lead to self-censorship or omission of articles by journalists for fear of the repercussions. It is unjustifiable that journalists should pay in the course of their duty. I am of the view that while there should be implications for unprofessional journalism conduct, these cases should be civil in nature and the penalties less harsh.

The laws on national security and terrorism that restrict publication by news websites are not unique to Uganda as illustrated in the discussion on legal theory. The findings have illustrated that even liberal democracies like the US have such legislation. An example is the USA PATRIOT ACT that aims to deter and punish terrorist acts. The law allows the government to monitor communications more easily. This example illustrates that legal restrictions are not only found in developing democracies but also exist even in liberal democracies like the US.

It was also observed that some laws vest a lot of power in the person of the President. For example the outlawed law of sedition could be said to have been designed to limit criticism of the President. The Regulation of Interception of Communications Act, 2007 gives power to the President to assign a minister to administer it. In my view, the laws vest a lot of power in the Executive in matters of administration and implementation as opposed to the law makers (legislators). The design of the laws can, therefore, be argued, to favour the Executive, thus limiting checks and balances on this arm of government.

The Regulation of Interception of Communications Act and Computer Misuse Bill were passed two years ago (2010). The laws are yet to be operationalized and enforced. My assessment of the legislation gave me the impression that not much consideration was given to the context of international law. This is important because the Internet is transnational. An example is the case of the Budapest Convention on Cybercrime that is aimed at criminalizing conduct of cybercrimes, including attacks on computer systems. While Uganda has not ratified the treaty, there is need to reflect on its impact on laws such as Computer Misuse Bill.

### **6.3 Social-cultural restrictions: a case of censorship on moral issues**

Restrictions resulting from social-cultural matters are controversial because they involve the question of morals. Media freedom is weighed against the preservation of cherished values and ideals. In my view, while morals are protected in legislation, the restrictions to publishing largely emanate from in-house policies. Media houses have taken decisions on

the coverage of some controversial issues such as homosexuality and pornography. For example, the *New Vision* has a policy on the homosexuality debate, while *Daily Monitor* has one on pornography or nudity as illustrated in the findings.

In my view, restricting publication of controversial moral issues goes against the media's role of providing information and acting as a watchdog for society. Limiting access and the circulation of information kills ideas before they surface. The views or opinions can be both justified as has been argued by early theorists like John Milton who opposed prior censorship.

My reflection of the *New Vision* policy on the coverage of homosexuality illustrates that the media organization serves the interests of its top as opposed to the public interest. Scholars like Professor Judith Lichtenberg have criticized editorial policies as a disguised property claim (Lichtenberg, 1990: 120).

Furthermore, censorship of views on grounds that they are offensive to societal morals is unjustified and contrary to the values of free expression aimed at promoting individual autonomy and tolerance to diverging views. This is the gist of the argument Prof Guy Berger makes when he asserts, "*freedom of expression may not be restricted merely because a certain statement or form of speech is considered "offensive" or because it challenges established doctrines*" (Berger, 2007: 18). He asserts that the real test of free speech is when speech offends some parties. Therefore, the issue of societal morals will always be offensive. Non-coverage of these issues by some media houses will not preserve societal morals but instead deny individuals access to divergent views necessary for them to make informed decisions.

#### **6.4 Technological restrictions**

The study revealed that the major technical restrictions to publishing included attempted blocks on websites like *Radio Katwe* by the government with support from Internet Service Providers. However, the website overcame this blockade by establishing proxy sites. I, therefore, make the argument that while access to news websites in Uganda may be temporarily restricted, the government cannot permanently shut down news websites due to limited technological and economic resources. The government is still addressing challenges of improving Internet speeds and connections through projects like the National Data Transmission Backbone Infrastructure and e-Government Infrastructure (NBI/EGI)

project. The project is estimated to cost US\$106 million, which is a costly venture. This implies that the government's priority would be improving Internet access as opposed to blocking websites. While "...big multinationals such as Microsoft, Yahoo and Google have cooperated with the Chinese and other authoritarian Asian states in their censorship efforts" (Rønning, 2009: 11), this is less likely to be the case in Uganda mainly due to low Internet access and limited resources.

## **6.6 Assessment of media freedom on the web in Uganda**

The focus of the study is freedom of expression on the web. This is assessed in terms of the restrictions to publishing by news websites in Uganda. The findings revealed that while media legislation exists, loopholes such as the lack of precise definitions, specificity and the lack of operationalization present challenges for enforcement. The gaps, therefore, broaden rather than limit media freedom on the web.

The independent news websites- *Radio Katwe* and the *Uganda Record* -represent alternative online media. It was noted that the sites are out of business since they were not updated or could not be accessed. The attempted shutdown of *Radio Katwe* and criminal libel charges preferred against Timothy Kalyegira of the *Uganda Record* demonstrate the lack of tolerance of critical or alternative viewpoints by the government.

The findings also revealed that censorship was also a key threat to media freedom on the web. This was reflected both at the societal and editorial levels. The editorial policies such as those on homosexuality and pornography can be argued to help restrict discussion and flow of ideas on societal norms and values.

Finally, the technological glitches such as hacking present the ever-present threat of restricted access. They present the challenge of the risks that result from new technologies such as the possibility of running out of business. While the news websites have overcome the hacks, they have to invest a lot in securing their investments because the Internet hackers become more sophisticated as technology develops.

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## LIST OF APPENDICES

### Appendix i: List of interviewees

	NAME	ORGANISATION
1.	John Kakande	<i>New Vision</i> editor
2.	Sam Apedel	Deputy <i>New Vision</i> news editor and former website manager
3.	Apollo Mubiru	<i>New Vision</i> online editor
4.	Rita Kabatunzi	<i>New Vision</i> legal officer
5.	Brenda Nakayiwa	<i>New Vision</i> website uploader
6.	Joseph Kizza	<i>New Vision</i> online reporter
7.	Davis Weddi	Former <i>New Vision</i> online editor
8.	Alex Atuhairwe	<i>Daily Monitor</i> news editor
9.	David Tumusiime	<i>Daily Monitor</i> online sub-editor
10.	Ronald Muyimba	<i>Daily Monitor</i> Internet editor
11.	Ephraim Kasozi	<i>Daily Monitor</i> court correspondent
12.	Timothy Ntale	<i>Daily Monitor</i> administrative and legal officer
13.	Arinaitwe Rugyendo	<i>Red Pepper</i> managing editor
14.	Dalton Kaweesa	<i>Red Pepper</i> online reporter
15.	Gilbert Mugasha	<i>Red Pepper</i> online editor
16.	Timothy Kalyegira	<i>Uganda Record</i> editor
17.	Peter Mwesige	African Centre for Media Excellence executive director
18.	Denis Jjuuko	Media scholar and consultant
19.	Gerald Businge	New media scholar
20.	Geoffrey Wokulira Ssebagala	Human Rights Network for Journalists in Uganda programmes coordinator
21.	Godfrey Mutabazi	Uganda Communications Commission (UCC) executive director
22.	Paul Mukasa	Media Council secretary
23.	Fred Opolot	Uganda Media Centre executive director

## **Interview guides**

### **Introduction**

The research project is centered on freedom of the press with focus on Internet-based newspapers. The study aims at exploring what restrictions are imposed on news websites in Uganda and find out why the restrictions are imposed. It also assesses the implications of these restrictions on media output. The research project is a key component of my Master of Philosophy in Media Studies at the University of Oslo in Norway. I am a Ugandan student interested in the study because the Internet is growing media platform in developing countries and it can be argued to broaden the platform for the media in its role of informing the public, encouraging debate and exchange of ideas, checking on those in positions of authority, and promoting democracy through the debate and discussion of laws and policies. The information you provide will strictly be used for this research project. The interview will be tape-recorded and I will take notes as you speak. If you have any questions or objections before the interview begins, please let me know.

### **Appendix ii: Guide for editors**

#### **Opening questions**

1. What is your understanding of the concept freedom of expression?
2. What role do you think the media play in promoting free expression?
3. What are your views on the role of the Internet as a news media platform in a developing country like Uganda?
4. Why do you think the media deserve protection in performing their role?

#### **Key questions**

5. What laws affect how you select articles for publication on your websites?
6. Are the laws any different from those that apply to the print and broadcast platforms?
7. How do you ensure that the articles you publish comply with the law?
8. What legal suits have been brought upon news websites over the publication of articles and by whom?

9. Why were you sued for publication of articles on your websites?
10. Are the cases ongoing or concluded?
11. What was the judgment in the concluded cases?
12. Have you been shut down over the publication of articles on your website?
13. What is your view about your shutdown?
14. What considerations do you have in mind when selecting articles published on your websites?

### **Closing question**

15. What is your view on the state of freedom of expression and the media in Uganda?

## **Appendix iii: Guide for journalists**

### **Opening questions**

1. What is your understanding of the concept freedom of expression?
2. What role do you think the media play in promoting free expression?
3. What are your views on the role of the Internet as a news media platform in a developing country like Uganda?
4. Why do you think the media deserve protection in performing their role?

### **Key questions**

5. What laws affect how you write articles for publication on your websites?
6. How do you go about writing and publishing articles to ensure that you comply with the law?
7. Are the laws any different from those that apply to the print and broadcast platforms?
8. How do you ensure that the articles you publish comply with the law?
9. What legal suits have been brought upon you over articles you have written that have been published on your news website and by whom?
10. Why were you sued for publication of articles?
11. Are the cases ongoing or concluded?
12. What was the judgment in the concluded cases?
13. What other considerations do you have in mind when writing articles?

14. Has your news website been shut down over the publication of articles?
15. What is your view about your shutdown?

### **Closing question**

16. What is your view on the state of freedom of expression and the media in Uganda?

## **Appendix iv: Guide for website uploaders in the newsrooms**

### **Opening questions**

1. What is your understanding of the concept of freedom of expression?
2. What is your view of the role of media platforms such as the Internet in promoting freedom of expression?
3. Why do you think the media deserve protection in the role they perform

### **Key questions**

4. What does your job involve?
5. What guidelines do you adhere to while posting articles on news websites?
6. What is your view about the guidelines that influence your job in posting articles on the news websites?
7. What challenges do you encounter in performing your job?

### **Closing questions**

8. What is your view on the state of freedom of expression and the media in Uganda?

## **Appendix v: Guide for Information Technology (IT) specialists in the newsrooms**

### **Opening questions**

1. What is your understanding of the role of the media in society?
2. Why do you think access to the Internet is important for media houses?
3. What does your job as IT specialist involve?

### **Key questions**

4. Who provides you with Internet access?

5. What conditions are set by Internet Service Providers for your news organization to access to the Internet?
6. Why do you think Internet Service Providers set conditions for access to the Internet?
7. How do you ensure that staff members adhere to these conditions?
8. What challenges do you encounter in performing your role in the newsroom?

#### **Closing questions**

9. How can IT specialist support journalists to ensure that they perform their role effectively?

### **Appendix vi: Guide for media scholars/ activists**

#### **Opening questions**

1. What is your understanding of the concept freedom of expression?
2. What role do you think the media play in promoting free expression?
3. What differentiates the Internet from other media platforms?
4. What are your views on the role of the Internet as a news media platform in a developing country like Uganda?
5. Why do you think the media deserve protection in performing their role?

#### **Key questions**

6. What is your view of the laws that affect the publication of articles by news websites?
7. What purpose do you think the laws serve?
8. Are the laws different from those that guide the publication of articles in the print and broadcast platforms?
9. What legal suits are you aware of that involve articles published on news websites?
10. What is your opinion about the suits?
11. What is your view about monitoring of news websites?
12. What is your view about the shutting down of news websites over the publication of articles?

#### **Closing questions**

13. What is your view on the state of freedom of expression and the media in Uganda?

### **Appendix vii: Guide for legal officers/ scholars**

#### **Opening questions**

1. What is the value of free expression?
2. What role do the media play in promoting free expression?
3. Why do you think the media deserve protection in performing their role?
4. What differentiates the Internet from other media platforms?

### **Key questions**

5. What laws affect news websites in the publishing of their articles?
6. What purpose do the laws formulated to guide publication of articles by news websites serve?
7. Are the laws different from those that guide the publication of articles in the print and broadcast platforms?
8. What is your view about monitoring of news websites?
9. What is your view about the shutting down of news websites over the publication of articles?

### **Closing questions**

10. What role can lawyers play in advocating for a freer Internet platform?
11. What is your view on the state of freedom of expression and the media in Uganda?

## **Appendix viii: Guide for officials who monitor news websites**

### **Opening questions**

1. What is your understanding of the concept of freedom of expression?
2. What role do you think the media perform in promoting freedom of expression?
3. What are your views on the role of the Internet as a news media platform in a developing country like Uganda?
4. What are your views on why the media deserve protection in performing their role?

### **Key questions**

5. What is your view of the content published on news websites?
6. Why do you monitor the content published on news websites?
7. How do you keep check on what information news websites publish?
8. What procedures do you follow when dealing with news websites that publish content you think is a breach of journalistic practice or the law?

**Closing question**

9. How best can complaints resulting from the articles published on news websites be addressed?
10. What is your view on the state of freedom of expression and the media in Uganda?

**Appendix ix: Guide for officials who receive and mediate in complaints brought against news websites****Opening questions**

1. What is your understanding of the concept of freedom of expression?
2. What role do you think the media performs in promoting freedom of expression?
3. What are your views on the role of the Internet as a news media platform in a developing country like Uganda?
4. What are your views on why the media deserve protection in performing their role?

**Key questions**

5. What complaints do you receive about articles published on news websites?
6. Who brings the complaints to your organization?
7. What procedures do you follow in handling the complaints?
8. What challenges do you encounter in dealing with complaints brought against media houses arising from the publication of articles?

**Closing question**

9. How best can you address complaints brought against media houses over publication of articles?
10. What is your view on the state of freedom of expression and the media in Uganda?

**Appendix x: Email to *Radio Katwe* editors (pasted from my e-mail)**

Subject      Research interview  
Sender        brendabk@ulrik.uio.no Add contact  
Recipient    editor@radiokatwe.com Add contact  
Date          11.08.2011 10:08

Dear Sir/Madam,

I am a Ugandan doing my MPhil in Media Studies at the University of Oslo in Norway. I am carrying out research and the focus of my study is news websites. I am studying the conditions for publishing for news websites in Uganda and specifically interested in what restrictions (legal, social, technical and internal) are imposed the news websites in publishing their stories and try to analyse why the restrictions.

I am interested in the study because I believe that the Internet is a growing media platform in developing countries like Uganda and there is an increasing shift of focus, advertising and discussion from the traditional media to the online media the world over.

I would, therefore, like to ask you some questions online. Kindly let me know whether you are interested in taking part in this study. The information that you provide will be strictly used for research purposes.

Looking forward to your consideration,

Regards,

Brenda Kamulegeya

Mobile: +4746363810